

A
CONFERENCE
DESIRED BY THE
LORDS AND HAD
by a Committee of both
Houses,

CONCERNING
THE RIGHTS AND PRIVILEGES
of the Subjects.

Discoursed by

Sir DUDLEY DIGGES.

Sir EDWARD LITTLETON Knight,
now Lord Keeper.

Master SELDEN.

Sir EDWARD COOKE.

With the *Objections* by Sir Robert Heath Knight
then Attorney Generall, and the *Answers*.

3^o. Apr. 4. Car. 1628.

LONDON,

Printed by A. N. for Mathew Walbancke, and Richard
Best, and are to be sold at their shops at
Graies-Inne Gate. 1642.

A
CONFERENCE
DESIRED BY THE
LORDS AND BISHOPS

CONCERNING
THE RIGHTS AND PRIVILEGES
OF THE CLERGY

Presented by
Sir Henry Grey
and Edward Littleton Knight
now Lord Keeper
of the Great Seal
of Great Britain
To the Honourable
the Commons in
Parliament assembled

Printed by
J. Sturges and
J. Smith



THE INTRODVCTION.

Sir Dudley
Diggs.

MY LORDS,



Shall I hope auspiciously begin this Conference this day, with an observation out of the holy Story, in the dayes of good King *Iosiah*, when the Land was purged of Idolatry, and the great men went about to reaire the house of God, while money was sought for, there was found a Booke of the Law which had beene neglected, and afterwards being

2 Chro. Cha.

34.

2 Kings Chr.

22.

presented to the good King, procured the blessing which your Lordships may reade in the Scriptures.

My good Lords, I am confident your Lordships will ascheerefully joyne with the Commons, in acknowledgement of Gods great blessing in our good King *Iosiah*, as the Knights, Citizens, and Burgeses, of the House of Commons, by mee their unworthiest servant, doe thankfully remember your most religiously and truly honourable invitation of them to the late Petition, for cleansing this Land from Popish abominations, which I may truly call a necessary and a happy repairing of the house of God, and to goe on with the parallel, whilst we the Commons out of our good affections were seeking for money, we found I cannot say a booke of the Law, but many and fundamentall points thereof neglected and broken, which hath occasioned our desire of this conference, wherein I am first commanded to shew unto your Lordships in generall, that the Lawes of *England* are grounded on reason more ancient

then bookes, consisting much in unwritten customes, yet so full of Justice and true equitie, that your most Honourable Predecessors, and Ancestours propugned them with a *notum mutari*, and so ancient, that from the Saxon dayes, notwithstanding the Injuries and ruines of time, they have continued in most parts the same, as may appeare in old remaining Monuments of the Lawes of *Ethelbert*, the first Christian King of Kent, *Ina* the King of the West Saxons, *Offa* of the Mertians, and of *Alfred* the great Monarch who united the Saxon Heph-tarchie, whose lawes are yet to bee seene. published, as some thinke by Parliament, as he sayes to that end, *Ut qui sub uno rege, sub una lege regerentur*. And though the Booke of *Litchfield* speaking of the times of the Danes, sayes that then *Ius solum erat in regno, leges & consuetudines sopita sunt*, and *prava voluntas, vis, & violentia magis regnabant quam iudicia vel iustitia*; yet by the blessing of God a good King, *Edward*, commonly called *St. Edward*, did awaken those lawes, and as the old words are, *Excitatas reparavit, reparatas decoravit, decoratas confirmavit*; Which *confirmavit*, shewes that good King *Edward* did not give those Lawes which *William* the Conquerour and all his Successours since that time have sworne unto.

And here my Lords, by many Cases frequent in our moderne Lawes strongly concurring with those of the ancient Saxon Kings, I might, if time were not more pretious, demonstrate that our Lawes and Customes were the same.

I will only intreat your Lordships leave to tell you, that as we have now, even in those Saxon times they had their Court Barons, and Court Leets, and Sheriffs Courts, by which, as *Tacitus* sayes of the *Germanes*, their Ancestours *Iura reddabant per pagos & vicos*; and I doe beleeeve, as wee have now, they had their Parliaments, where new lawes were made *cum consensu Pralatorum magnatum & totius communitatis*; or as another writes, *cum consilio pralatorum, nobilium, & sapientium laicorum*. I will adde nothing out of *Glanville* that wrote in the time of *H. 2.* or *Bracton* that writ in the dayes of *H. 3.* only give me leave to cyte that of *Fortescue*, the learned Chancellor to *H. 6.* who writing of this Kingdome, sayes, *Regnum istud*

istud moribus nationum, & Regum temporibus, eisdem quibus nunc Regitur legibus & consuetudinibus regebatur. But my good Lords, as the Poet said of Fame, I may say of our common Law ;

Ingrediturq; solo caput inter nubila condit.

Wherefore the cloudy part being mine, I will make hast to open way for your Lordships to heare more certaine Arguments, and such as goe on more sure grounds.

Be pleased then to know, that it is an undoubted and fundamentall point of this so antient common law of *England*, that the Subject hath a true property in his goods and possessions, which doth preserve as sacred that *Meum & tuum*, that is the nurse of Industry, and mother of Courage, and without which there can be no Justice, of which *Meum & tuum* is the proper object. But the undoubted birth-right of Free Subjects, hath lately not a little beene invaded and prejudiced by pressures, the more grievous, because they have beene pursued by imprisonment contrary to the Franchises of this Land, and when according to the Lawes and Statutes of this Realme, redresse hath beene sought for in a legall way by demanding *Habeas Corpus* from the Judges, and a discharge or triall according to the law of the Land, successe hath failed, that now inforceth the Commons in this present Parliament assembled, to examine by Acts of Parliament, presidents and reasons, the truth of the English Subjects libertie, which I shall leave to learned Gentlemen, whose learned Arguments I hope will leave no place in your Lordships memories, for the errors and infirmities of your humblest servant, that doth thankfully acknowledge the great favour of your Honourable and patient Attention.



Mr. Little-
ton.

The Argument made by the
Command of the house of Commons out of
Acts of Parliament, and authorities of Law, ex-
pounding the same, at the first Conference with the
Lords concerning the libertie of the person
of every Free-man.

MY LORDS,



Pon the occasions delivered by the Gentle-
man, your Lordships have heard the Com-
mons have taken into their serious consid-
eration the matter of personall libertie, and
after long debate thereof on divers dayes,
as well by solemne Arguments, as single
propositions of doubts and answers, to
the end no scruple might remaine in any mans brest unsatis-
fied, they have upon a full Search, and cleare understanding of
all things pertinent to the question, unanimously declared;
That no Free-man ought to bee committed or restrained in
prison by the command of the King or Privie Counsell, or any
other, unlessse some cause of the commitment, detainer, or
restraint bee expressed, for which by law hee ought to bee
committed, detained, or restrained. And they have sent mee
with other of their members, to represent unto your Lord-
ships the true grounds of their resolution, and have charged
me particularly, leaving the reasons of law, and presidents, for
others, to give your Lordships satisfaction, that this libertie is
established and confirmed by the whole State, the King, the
Lords spirituall and temporall, and Commons, by severall
Acts of Parliament, the authoritie whereof is so great, that it
can receive no answer save by interpretation or repeale by fu-
ture Statutes. And those that I shall mind your Lordships of
are

are so direct in point, that they can beare no other exposition at all, and sure I am they are still in force; The first of them is the grand Charter of the Liberties of England, first granted in the seventeenth yeare of King John, and renewed in the ninth yeare of Henry the third, and since confirmed in Parliament above 30. times, the words there are Chap. 29. *Nullus liber homo capiatur, vel imprisonetur, aut disseisetur de libero tenemento suo vel liberis consuetudinibus suis, aut utlagetur, aut exuletur, aut aliquo modo destruat, nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium parium suorum vel per legem terra.*

These words *nullus liber homo*, &c. are expresse enough, yet it is remarkable, that Mathew Paris, an Authour of speciall credit, doth observe, fol. 432. that the Charter of 9.H.3. was the very same as that of 17. King John, in nullo dissimilis are his words, and that of King John he setteth downe verbatim, Fo. 342. and there the words are directly, *Nec eum in Carcerem mittemus*, and such a corruption as is now in the print might easily happen twixt 9.H.3. and 28. of Ed. 1. when this Charter was first exemplified, but certainly there is sufficient left in that which is extant to decide this question, for the words are, that no Free-man shall be taken or imprisoned, but by the lawfull judgement of his Peeres, which is by a Iurie of Peeres, ordinary Iurors for others, who are their Peeres, or by the law of the Land; Which words, Law of the Land, must of necessity be understood in this notion, to be by due Proces of the Law, and not the law of the Land generally, or otherwise it would comprehend Bond-men (whom wee call Villaines) who are excluded by the word *liber*; For the generall law of the Land doth allow their Iords to imprison them at their pleasure without cause, wherein they only differ from the Free-men in respect of their persons, who cannot be imprisoned without a cause. And that this is the true understanding of these words *per legem terra*, will more plainly appeare by divers other Statutes that I shall use, which doe expound the Law according. And though the words of this grand Charter be spoken in the third person, yet they are not to be understood of suites betwixt party and party, at least not

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Littletons
Argument.

not of them alone, but even of the Kings suites against his Subjects, as will appeare by the occasion of getting of that Charter, which was by reason of the differences betwixt those Kings and their people, and therefore properly to bee applied unto their power over them, and not to ordinary questions betwixt Subject and Subject. Secondly, the words *per legale iudicium parium suorum*, immediatly preceding the other of *per legem terra*, are meant of trials at the Kings suit, and not at the prosecution of a Subject. And therefore if a Peere of the Realme be arraigned, at the Suit of the King, upon an Indictment of murther, he shall be tried by his Peeres; but if he be appealed of murther by a Subject, his triall shall be by an ordinary Jury of 12 Freeholders, as appeareth in 10.Ed.4. 6. 33.H.8. Brooke title trials 142. Stan. Cor. li.3. ca. 1. fol. 152. and in 10.Ed.4.6. it is said, such is the meaning of *Magna Charta*, for the same reason; Therefore as *per iudicium parium suorum*, extends to the Kings Suit, so shall these words *per legem terra*; And in 8.Ed.2. rot. parliament. membrana 7. there is a Petition that a Writ under the priyie Seale went to the Guardians of the great Scale, to cause lands to bee seized into the Kings hands, by force of which there went a Writ out of the Chancery to the Eschetor, to seize against the forme of the grand Charter, that the King nor his ministers shall out no man of his Freehold without reasonable judgement, and the party was restored to his land, which sheweth the Statute did extend to the King. There was no invasion upon this personall libertie, till the time of King Ed.3. which was eschoone refented by the Subject, for in 5.Ed.3.ca.9. it is ordained in these words; It is enacted that no man from henceforth shal be attached by any occasion, nor fore-judged of life or limbe, nor his lands, tenements, goods nor chattels seized into the Kings hands, against the forme of the great Charter, and the law of the Land. 25.Ed.3.cap.4. It is more full, and doth expound the words of the grand Charter, and is thus; Whereas it is contained in the grand Charter of the franchises of England, that none shall be imprisoned, nor put out of his freehold, nor free custome, unlesse it be by the law of the Land, It is awarded, assented, and established, that from hence none shall bee taken

Simor indire
terra trie per
papes autey-
ment si soit ap-
peale, Br. tit Co-
rone 153. nota
bien.

Sta. 5.Ed.3. 9.

Sta. 15.Ed.3.

4.

taken by Petition or Suggestion, made to our Lord the King, Sir Edward or to his Council, unless it be by Inditement, or presentment *Littleton* of his good and lawfull people of the same neighbourhood, *Argument.* which such Deeds shall be done in due manner, or by Proces made by Writ originall at the Common law, nor that none be Out of his Franchises, nor of his Freehold, unless he be duly brought in answer, and fore-judged of the same by the course of the law, and if any thing be done against the same, it shall be redressed and holden for none.

Out of this Statute I observe, that what in *Magna Charta*, and the preamble of the Statute is termed by the law of the Land, is in the body of this Act expounded to bee by Proces made by Writ originall at the Common law, which is a plain interpretation of the words (Law of the Land) in the grand Charter. And I note that the Law was made upon the commitment of divers to the Tower, no man yet knoweth for what. *Lex terre expound p proces d'ee fait p bre original al cōmon ley.*

28. Ed 3. cap. 3. It is more direct, this libertie being followed with fresh Suit by the Subject, where the words are not many, but very full and significant; That no man of what state or condition he be, shall be put out of his lands nor tenements, nor taken, nor imprisoned, nor disinherited, nor put to death, without he be brought in answer by due Proces of law. *Sta. 28. Ed 3. ca. 3.*

Here your Lordships see the usuall words of The law of the Land, are rendered by Due Proces of the law.

36. Ed 3. Rot. parliament. numero 9. Amongst the Petitions of the Commons, one of them being translated into English out of French, is thus; First, that the great Charter, and the Charter of the Forrest, and other Statutes made in the time of his Progenitors, for the profit of him, and his Commonaltie, be well and firmly kept, and put in due execution, without putting disturbance, or making arrest contrary to them by speciall command, or in other manner. *36. E. 3. Rot. Parliam. nu. 9. Petition del Commons.*

The Answer to the Petition, which makes an Act of Parliament. Our Lord the King, by the Assent of the Prelates, Dukes, Earles, Barons, and the Commonaltie, hath ordained or established, that the said Charters and Statutes bee held and put in execution, according to the said Petition. It is observed. *Rñs al peticion.*

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vable that the Statutes were to be put in execution according to the said Petition, which is, that no arrest should bee made contrary to the Statutes, by speciall command. This concludes the question, and is of as great force, as if it were printed, for the Parliament roll is the true warrant of an Act, and many are omitted out of the bookes, that are extant in the Roll.

36. Ed. 3. Rot.
parl. num. 22.
Petition d'
Commons.

36. Ed. 3. Rot. *Parliamenti num. 22.* explaineth it further, for there the Petition is, *Item*, as it is contained in the grand Charter and other Statutes, that no man be taken or imprisoned by speciall command without Inditement, or other due Proses to be made by the law, and oftentimes it hath beene, and yet is, many are hindred, taken, and imprisoned without Inditement, or other Proses made by the Law upon them, as well of things done out of the Forrest of the King, as for other things, that it would please our said Lord to command those to bee delivered, which are so taken by speciall command, against the forme of the Charter and Statutes as aforesaid.

The answer is,

Ris al Petition.
on.
Stat. Ed. 3.
ca. 18.

The King is pleased, that if any man find himselfe grieved, that he come and make his complaint, and right shall be done unto him. 37. Ed. 3. cap. 8. agreeth in substance with them, it saith, Though it be contained in the great Charter, that no man be taken nor imprisoned, nor put out of his Freehold without Proses of the law; Neverthelesse divers people make false suggestions to the King himselfe, as well for malice as otherwise, whereof the King is often grieved, and divers of the Realme put in dammage against the forme of the same Charter; Wherefore it is ordained, that all they which make Suggestions, shall be sent with the same Suggestions to the Chancellour, Treasurer, and his grand Counsell, and that they there find suretie to pursue their Suggestions, and incurre the same paine that the other should have had, if he were attainted, in case that the Suggestion be found evill, and that then Proses of law be made against them without being taken or imprisoned, against the forme of the said Charter, and other Statutes; here the law of the Land in the grand Charter is explained to be without Proses of law.

Stat. 42. Ed. 3.
ca. 13.

42. Ed. 3. cap. 13. At the request of the Commons by their
Petition

Petition put forth in this Parliament, to eschew mischiefe and Sir Edward
 dammage done to divers of his Commons by false accusers, *Littletons*
 which oftentimes have made their accusations, more for re- Argument.
 venge and singular profit, then for the profit of the King, or of
 his people, which accused persons, Some have beene taken
 and caused to come before the Kings Counsell by Writ, and
 other wise upon grievous paines against the Law, It is assen-
 ted and accorded for the good governance of the Commons,
 that no man be put to answer without presentment or matter
 of record, or by due Proces and Writ originall according to
 the old law of the Land, And if any thing from hence bee
 done to the contrary, it shall be void in the Law, and holden
 for Error.

But this is better in the Parliament roll, where the Petition
 and answer, which make the Act, are set downe at large.

42. Ed. 3. Rot. Parliament, numero 12.

Sta. 42. Ed. 3.
 Rot. Parliament.
 num. 12.

The Petition.

Item, Because that many of your Commons are hurt and
 destroyed by false accusers, who make their accusations more
 for their revenge and particular gaine, then for the profit of
 the King, or of his people. And those that are accused by
 them, some are taken, and others are made to come before the
 Kings Counsell by Writ, or other commandement of the
 King, upon grievous paines contrary to the Law. That it
 would please our Lord the King, and his good Counsell, for
 the just government of his people, to ordaine, that if hereaf-
 ter any accuser purpose any matter for the profit of the King,
 that the same matter be sent to the Iustices of the one bench or
 of the other, or the Assises, to be inquired and determined ac-
 cording to the Law; and if it concerne the Accuser or party,
 that he take his Suit at the common law, and that no man bee
 put to answer without presentment before Iustices or matter
 of Record, and by due Proces and originall Writ, according to
 the ancient law of the Land. And if any thing henceforward
 bee done to the contrary, that it bee void in law, and held
 for error.

Petition des
 Cōmons.

Here by due Proces and originall Writ, according to the
 ancient Law of the Land, is meant the same thing, as *per legem*
terra

Sir Edward *terra, in Magna Charta*, and the abuse was, they were put to Littletons answer to the commandement of the King.

Argument.

The Kings Answer is thus.

Rñs al petiti-
on.

Because that this Article is an Article of the grand Charter, the King willeth that this be done, as the Petition doth demand. By this appeareth that *per legem terra, in Magna Charta*, is meant by due Proces of the Law.

Obi. hors d' l'
Sta. de Westm.
1. cap. 15.

Thus your Lordships have heard act of Parliament in the point. But the Statute of *Westmynst*, 1. cap. 15. is urged to disprove this opinion, where it is expressly said, that a man is not repleviseable, who is committed by the command of the King, therefore the Command of the King, without any cause shewed, is sufficient to commit a man to prison. And because the strength of the Argument may appeare, and the Answer bee better understood, I will reade the words of the Statute, which

Que ne sont
repleviseable
q; sont com-
mit per le com-
mand le Roy.

Les parols
d' Sta.

are thus. And forasmuch as Sheriffs and others, which have taken and kept in prison persons detected for Felonie, and oftentimes have let out by Replevin, such as were not repleviable, and have kept in prison such as were repleviable, because they would gaine of the one party, and grieve the other, And forasmuch as before this time it was not certainly determined what persons were repleviable, and what not, but only those that were taken for the death of a man, or by the commandment of the King, or of his Iustices, or for the Forrest, It is provided, and by the King commanded, that such prisoners as were before outlawed, and they which have abjured the Realme, provers, and such as be taken with the manner, and those which have broken the Kings prison, Theeves openly defamed and knowne, and such as be appealed by approvers, so long as the approvers are living, if they be not of good name, and such as be taken for burning of houses feloniously done, or for false money, or for counterfeiting the Kings Seale, or persons Excommunicate taken at the request of the Bishop, or for manifest offences, or for treason touching the King himselfe, shall be in no wise repleviable by the common Writ, or without Writ; But such as be indicted of Larceny by inquests taken before Sheriffs or Bayliffs by their office, or of light

light suspicion, or of petit Larceny, that amounteth not above Sir Edward the value of twelve pence, if they were not guiltie of some *Littletons* other Larceny afore-time, or guilty of receipt of Felons, or Argument. of commandment, or of force, or of ayde of felony done, or guilty to some other trespassse, for which one ought not to lose either life or member, and a man appealed by an approver, after the death of the approver, if he be no common theefe or defamed, shall from henceforth be lett out by sufficient suretie, whereof the Sheriff will be answerable, and that without giving ought of their goods; and if the Sheriffe, or any other, let any goe at large, by surety, that are not repleviable, if hee be Sheriffe, or Constable, or any other Bailiffe, or such as hath a Fee, which hath keeping of prisons, and thereof be Attainted, he shall lose his Office and Fee for ever. And if the under Sheriffe, Constable or Bailiffe, or such as hath Fee for keeping of Prisons, doe it contrary to the will of his Lord, or any other Bailiffe being not of Fee, they shall have three yeares imprisonment, and make a Fine at the Kings pleasure; And if any man with-hold Prisoners repleviseable, after that they have offered sufficient Suretie, he shall pay a grievous amercement to the King, and if he take any reward for the deliverance of such, he shall pay double to the Prisoner, and also shall be in the great mercy of the King.

The Answer.

It must be acknowledged, that a man taken by the commandment of the King is not repleviseable, for so are the expresse words of this Statute, but this maketh nothing against the Declaration of the Commons; For they say not the Sheriffe may replevy such a one by sureties, *silicet manucaptores*, but he is bayleable by the Kings Courts of Justice; for the better apprehending whereof, it is to be knowne, that there is a difference betweene repleviseable, which is alwayes by the Sheriffe upon pledges or Sureties given, and baileable, which is by a Court of Record, where the Prisoner is delivered to bayle, and they are his Gaolers, and may imprison him, and shall suffer for him body for body, as appeareth 33. & 36. *Ed 3. titulo mainprise 12. & 13.* where the difference betwixt Bayle and

Diversitie enter Bayleable & repleviseable.

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Mainprife is expressly, *take*, and if the words of the Statute themselves be observed, it will appeare plainly that it extends to the Sherife and other inferiour Officers, and doth not bind the hands of the Judges. The preamble which is the key that openeth the Entrance into the meaning of the makers of the Law is; Forasmuch as Sherifes and others have taken and kept in prison persons detected of felonie. Out of these words I observe that it nominateth Sherifes, and then if the Judges should be included, they must be comprehended under that generall word, *other*, which doth not extend to those of an higher ranke, but to inferiours, for the best by all courses is first to be named. And therefore if a man bring a Writ of Customs and services, and name rents and other things, the generall shall not include homage, which is a personall service, and of an higher nature, but it shall extend to ordinary annuall service, 31. E. 1. *Droit*, 67. So the Statute of 13. E. 1. cap. 10. which beginneth with Colledges, Deanes and Chapters, Parsons, Vicars, and concludes with these words, and others having spirituall promotions, shall not comprehend Bishops that are of an higher degree, as appeareth in the Archbishop of *Camerburies* Case, 2. Reports, fol. 46. B. And thus much is explained in the very Statute towards the end; when it doth enumerate those were meant by the word, *other*, namely under Sherifes, Constables, Bailiffs, &c. Againe, the words are Sherifes, and others which have taken and kept in prison; Now every man knoweth, Judges doe neither arrest, nor keep men in prison, that is the office of Sherifes and other inferiour Ministers. Therefore this Statute meant such only and not Judges. The words are further, that they let out by replevin such as are not repleviable, that is the proper language for a Sherife; Nay, more expresse afterward in the body of the Statute, that such as are there mentioned, shall be in no wise repleviseable by the common Writ, which is *de Homine replegiando*, and is directed to the Sherife, nor without Writ which is by the Sherife *Ex officio*. But that which receives no answer is this, that the command of the Justices, who derive their authoritie from the Crowne is the equalled and to this purpose with the command of the King. And therefore by all
reaso-

reasonable construction, it must needs relate to Officers that are subordinate to both, as Sherifes, under-Sherifes, Bailiffes, Constables, and the like. And it were a harsh exposition to say that the Justices might not discharge their owne command, and yet that reason would conclude as much; And that this was meant of the Sherife and other ministers of Justice by the recitall 27. Ed. 1. cap. 3. and likewise by *Fleta* a manuscript so called, because the Author lay in the Fleet when he made the booke, for he lib. 2. cap. 52. in his Chapter of turnes, and the viewes of the hundred Court in the Countrey setteth downe the Articles of the Charges that are there to be inquired of, amongst which, one of them is *De Replegibilibus injuste detentis & irreplegiabilibus dimissis*; which cannot be meant of not bayling by the Justices, for what hath the inferior Courts in the Countrey to doe with the acts of the Justices? and to make that more plaine, he setteth downe in that chapter, that concerneth Sherifes only, the very Statute of *Westminster* 1. which he translates *verbatim* out of the French into the Latine, save that he renders, taken by the command of of the Justices, thus, *per iudicium Justiciariorum*, and his Preface to the Statute plainly sheweth, that he understood it of replevine by Sherifs, for he saith, *Qui debent per plegios hoc dimitti, qui non declarat hoc Statutum*, and *per plegios* is before the Sherife. But for direct authority, it is the opinion of *Newton*, Chiefe Justice, 22. H. 6. 46. where his words are these; It cannot be intended that the Sherife did suffer him to goe at large by Mainprise, for where one is taken by the Writ of the King, or the Commandement of the King, he is irreplevisable, but in such case his friends may come to the Justices from him if he be arrested, and purchase a *Supersedeas*; This Judge concludes that the Sherife cannot deliver him that is taken by the command of the King, for that he is irreplevisable, which is the very word of the Statute: but, saith he, his friends may come to the Justices and purchase a *Supersedeas*; So he declares the very question, that the Sherife had no power, but the Justices had power to deliver him that is committed by the Kings command; and both the ancient and moderne practice manifest as much, for he that is taken for the death of a man,

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Littleton
Argument.

22. H. 6. 46. p.
Newton Chiefe
Justice.

Sir Edward
Littletons
Argument.

man, or for the Forreſt, is not repleviable by the Sherife, yet they are ordinarily bayled by the Juſtice, and were by the Kings Writs directed to the Sherifs in the times of *Ed. 1.* and *2.* as appeares in the cloſe rolls, which could not be done if they were not baylable. And it is every dayes experience, that the Juſtices of the Kings Bench doe bayle for Murther, and for offences done in the Forreſt, which they could not doe, if they were irrepleviſeable, if *Westmiſt. 1.* were meant of the Juſtices, aſwell as of the Sherifs. For authorities that have beene offered to prove the contrary, are in number three, the firſt is *2 1. Ed. 3. Rot. 2.* which alſo is in the Booke of Pleas in Parliament at the Tower, upon an action there brought, *fol. 44.* It is not an Act of Parliament, but a reſolution in Parliament upon an action there brought, which was uſuall in thoſe times. And the caſe is, that *Stephen Rabaz*, the Sherife of the Counties of *Leiceſter* and *Warwicke*, was queſtioned, for that he had let at large by Surety, amongſt others, one *William*, the ſonne of *Walter le Peſons*, againſt the will and command of the King, whereas the King had commanded him by Letters under the Privie Seale, that he ſhould doe no favour to any man that was committed by the Earle of *Warwicke*, as that man was, whereunto the Sherife answered, that he did it at the requeſt of ſome of the Kings houſhold upon their Letters, and becauſe the Sherife did acknowledge the receipt of the Kings Letters, thereupon he was committed to priſon according to the forme of the Statute. To this I answer, the Sherife was juſtly puniſhed, for that he is expreſly bound by the Statute of *Westmiſt. 1.* which was agreed from the beginning, but this is no prooſe, that the Iudges had no power to bayle this man.

The next Authority is *33. H. 6.* in the Court of Common Pleas, *fo. 28. b. 29.* where *Soberth Poyning* Eſquire, was brought to the Barre upon a *Capias*, and was returned, that he was committed *Per Duos de Conſilio*, (which is ſtrongeſt againſt what I maintaine) *pro diverſis cauſis regem tangent.* and he made an Attornay there in an action, whence it's inferred, that the returne was good, and the party could not be delivered. To this the answer is plaine.

First,

First, no opinion is delivered in that booke, one way or other, upon the returne, neither is there any testimony whether he were delivered, or bayled, or not. 2. It appeares expressly, that he was brought thither, to be charged in an action of debt, at another mans suit, and no desire of his owne to bee delivered, or bayled, and then if hee were remanded, it is in no way materiall to the question in hand. But that which is most relied upon, is the opinion of *Stan.* in his Booke of Pleas of the Crowne *lib. 2. cap. 18. fol. 72. 73.* in his Chapter of Mainprise, where hee reciteth the Statute of *Westm. 1. cap. 15.* and then saith thus; By this Statute it appeares, that in foure cases at the Common law a man was not repleviabie, to wit, those that were taken for the death of a man, by the command of the King, or his Justices, or for the Forrest, thus farre he is most right, then hee goeth on, and saith, as to the command of the King, that is understood by the command of his owne mouth, or his counsell, which is incorporated unto him, and speake with his mouth, or otherwise every Writ or Capias to take a man, which is the Kings command, would be as much; and as to the command of the Justices, that is meant their absolute commandment, for if it bee by their ordinary commandment, he is repleviabie by the Sherife, if it be not in some of the cases prohibited by the Statute.

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Rñs al Obi.
hors de Stan.
pl. Cor' 72.

The answer that I give unto this is, that *Stanford* had said nothing whether a man may be committed without cause by the Kings command, or whether the Judges ought not to bayle him in such Case, only that such a one is not replevisable, which is agreed, for that belongs to the Sherife. And because no man should thinke he meant any such thing, hee concludes the whole Sentence touching the Command of the King and the Justices, that one committed by the ordinary command of the Justice, is replevisable by the Sherife, or at least it appeares not that he meant, that a man committed by the King, or by the Privie Counsell without cause, should not be bayleable by the Justices, and he hath given no opinion in this case; what he would have said, if he had beene asked the question cannot be knowne, neither doth it appeare, that by any thing that hee hath said, hee meant any such thing as would bee inferred.

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out of him. And now my I ords I have performed the Com-
mands of the Commons, and as I conceive shall cleare the De-
claration of personall libertie, an antient and undoubted truth,
fortified with seven Acts of Parliament, and not opposed by
any Statute or authoritie of law whatsoever.

*The objections of the Kings Counsell, with like answers made
theremunto, at the two other Conferences touching the same
matter.*

1. Object.

Le Rñs.

It was agreed by the Attorney generall, that the 7. Statutes
urged by the Comons were in force, and that *magna Charta*
did extend most properly to the King, but he said, 1. That some
of them are in generall words, and therefore conclude nothing,
but are to be expounded by the Presidents, and others that bee
more particular, are applied to the Suggestions of Subjects,
and not to the Kings command simply of it selfe; Hereunto it
was answered, that the Statutes were as direct as could bee,
which appeareth by the reading of them, and that though
some of them speak of Suggestions of the Subjects, yet others do
not, and they that doe are as effectuell, for that they are in e-
quall reason, a commitment by the command of the King, being
of as great force, when it moveth from a Suggestion from a
Subject, as when the King taketh notice of it himselfe, the ra-
ther for that Kings seldome intermeddle with matters of this
nature, but by information from some of their people.

2. Object.

3. Master Attorney objected that *per legem terra in Magna
Charta* (which is the foundation of this question) cannot be
understood for Proces of the Law and originall Writs, for
that in criminall proceedings no originall Writ is used at all,
But every Constable either for Felonie or breach of the
Peace, or to prevent the breach of the Peace, may commit
without Proces or originall Writ, and it were hard the
King should not have the power of a Constable. And the Sta-
tute cyted by the Commons, make Proces of the Law, and
Writ originall, to be all one.

Le Rñs.

The answer of the Commons to this Objection was, that
they doe not intend originall Writs only by the Law
of

of the Land, but all other legall Proces, which comprehends the whole proceedings of Law upon cause, other then triall by Jury, *Judicium parium*, unto which it is opposed, thus much is imported *ex vi termini* out of the word Proces, and by the true acceptation thereof in the Statutes which have beene used by the Commons to maintaine their Declaration, and most especially the Statutes of 25. *Ed. 3. cap. 4.* where it appeareth that a man ought to be brought in to answer by the course of the Law, having former mention of Proces made by originall Writ. And in 28. *Ed. 3. cap. 3.* by the course of the Law is rendred by the due Proces of the Law. And 36. *Ed. 3. Rot. Parliamenti numero 20.* The Petition of the Commons saith, that no man ought to bee imprisoned by speciall command without Inditement or other due Proces to bee made by the Law. 37. *Ed. 3. cap. 18.* calleth the same thing Proces of the Law, and 42. *Ed. 3. cap. 3.* stileth it by due Proces and Writ originall, where the conjunctive must be taken for a dis-junctive, which charge is ordinary to an exposition of Statutes and Deeds to avoid inconveniences, to make it stand with the rest, and with reason, as it may be collected by the law of the Land in *Magna Charta*, by the course of the Law in 25. *Ed. 3.* by the due Proces of Law in 28. *Ed. 3.* other due Proces to bee made by the Law in 36. *Ed. 3.* Proces of the Law in 37. *Ed. 3.* and by due Proces and Writ originall in 42. *Ed. 3.* are one and the same thing, the later of these Statutes referring alwayes to the former, and that all of them import any due and regular proceedings of law upon a cause other then the triall by Jurie. And this appeareth 10. *Rep. 74.* in the Case of the Marshalsea, and 11. *Rep. 99. James Baggs Case*, where it is understood of giving Jurisdiction by Charter or prescription which is the ground of a proceeding by course of law. And in *Seldens Notes on Fortescue, fol. 29.* where it is expounded for Law wagger, which is likewise a tryall by law by the oath of the parties, differing from that by Jurie. And it doth truly comprehend these and all other regular proceedings in law upon cause, which gives authoritie to the Constable to arrest upon cause. And if this be not the true exposition of these words

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Sir Edward Littletons Argument. *per legem terra*, the Kings Counsell were desired to declare their meaning, which they never offered to doe, and yet certainly these words were not put into the Statute without some intention of consequence. And thereupon Mr. Seriant *Aspley* offered an interpretation of them thus, namely; that there were divers Lawes of this Realme, as the Common law, the law of the Chancery, the Ecclesiasticall law, the law of the Admiraltie, or Marine law, the law of Merchants, the Marshall law, and the law of State, and that these words *per legem terra* doe extend to all these Lawes. To this it was answered, that wee read of no law of State, and that none of these Lawes can bee meant there save the Common law, which is the principall and generall Law, and is alwayes understood by the way of Excellencie, when mention is of the law of the Land generally, and that though each of the other Lawes, which are admitted into this Kingdome by Custome or Act of Parliament, may justly be called a law of the Land, yet none of them can have the preheminence to be stiled the Law of the Land. And no Statute, Law booke, or other authority, printed or unprinted, could be shewen, to prove that the Law of the Land, being generally mentioned, was ever intended of any other then the Common Law, and yet even by these other Lawes a man may not be committed without a cause expressed. But it standeth with the rule of other legall expositions, that *per legem terra* must be meant the Common Law, which is the generall and universall Law, by which men hold their Inheritances, and therefore if a man speake of Eſcuage generally, it is understood as *Littleton* observeth, *Seſt.* 99. of the incertaine Eſcuage, which is a Knights service tenure, for the defence of the Realme, by the body of the tenant in time of warres, and not of a certaine Eſcuage which giveth only a contribution in money, and no personall service. And if a Statute speak of the Kings Courts of Record, it is meant only of the 4. at *Westminster* by way of excellencie, *6. Rep.* 20. *Gregories Case*; So the Canonists by the Excommunication simply spoken, doe intend the greater excommunication. And the Emperour in his Institutions saith, that the Civill Law being spoken generally is meant of the Civill law of *Rome*, though the Law of every

Rūs a cco.

every City is a Civill Law; as when a man names the Poet, Sir Edward the Gracians understand *Homer*, the Latinists *Virgil*. 2. Admit *Littletons per legem terra* extend to all the Lawes of the Land, yet a man Argument.

must not be committed by any of them, but by the due proceedings that are executed by those Lawes, and upon a cause declared. Again, it was urged that the King was not bound to expresse a cause of imprisonment, because there may be in it matter of State, not fit to be revealed for a time, lest the confederates thereupon make meanes to escape the hands of Justice. And therefore the Statute cannot be intended to restrain all commitments unless a cause be expressed, for that it would be very inconvenient and dangerous to the State, to publish the Cause at the very first. Hereunto it was replied by the Comons, 4. Object.

that all danger and inconvenience may be avoided by declaring a generall Cause, as for Treason, suspicion of Treason, misprision of Treason or felonie, without specifying the particular, which can give no greater light to a confederate, then will bee conjectured by the very apprehension upon the imprisonment, if nothing at all were expressed. It was further alledged that there was a kind of contradiction in the position of the House of Commons, when they say a party committed without a cause shewed, ought to be delivered or bayled, Bayling being a kind of imprisonment, deliverie a totall freeing. To this it hath beene answered, that it hath alwayes beene the discretion of the Judges, to give so much respect to a commitment by the Command of the King, or the Privie Councell, which are ever intended to be don in just and weighty causes, that they will not presently let them free, but bayle them to answer what shall be objected against them on his Majesties behalfe; but if any other inferiour Officer doe commit a man without shewing cause, they doe instantly deliver him, as having no cause to expect their leaseure. So the delivery is applied to an imprisonment by the command of some meane minister of Justice, Bayling when it is done by the command of the King or his Councell.

5. Object.

It was urged by Mr. Attorney, that Bayling is a grace and favour of a Court of Justice, and that they may refuse to doo it. This was agreed to be true in divers cases, as where the

6. Object.

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cause appears to be for felony or other crimes expressed, for that there is another way to discharge them in convenient time by their triall, and yet in these cases the constant practise hath beene anciently and modernly to bayle men, but where no cause of the imprisonment is returned, but the Command of the King, there is no way to deliver such persons by triall or otherwise, but that of the *Habeas Corpus*. And if they should be then remanded, they might be perpetually imprisoned without any remedy at all, and consequently a man that had committed no offence might be in worse case then a great offender, for the later should have an ordinary triall to discharge him, the other should never be delivered. It was further said, that though the Statute of *Westminster* 1. cap. 15. be a Statute which by way of provision did extend only to the Sherife, yet the recitall of that touching the foure causes wherein a man was not replevisable at the common law, namely those that were committed for the death of a man, by the command of the King, or of his Justices, or for the Forrest, did declare that the Justices could not bayle such a one, and that replevisable and bayleable

7. Objection.

Stan. pl. Cor. 72.

Le R^{ns}.

were *Synonyma* all one, and that *Stanford* a Judge of great authoritie doth expound it accordingly, and that neither the Statute nor he say replevisable by the Sherife, but generally without restraint; And that if the chiefe Justice committed a man, hee is not to be enlarged by any other Court, as appeareth in the Register. To this it was answered, That the recitall of the body of the Statute, relateth only to the Sherife only, as appeareth by the very words. 2. That Replevisable is to the Sherife, for that the word imports no more, but a man committed by the chiefe Justice, is bayleable by the Court of Kings Bench. 3. That *Stanford* meaneth all of the Sherife, or at least hee hath not sufficiently expressed that he intended the Justices. 4. It was denied that Replevisable and bayleable was the same, for they differ in respect of the place where they are used, bayle being in the Kings Court of record, Replevisable before the Sherife, and they are of severall natures, repleviable being a letting at large upon suretie, bayling being when one *traditur in Balliv.* the bayle are his Taylors and may imprison him and shall suffer body for body, which is not of replevyng by Sureties,

tyes, and differeth from Mainprife in this, Mainprife is an undertaking in a some certaine, Bayling to answer the condemnation in Civill causes, and for criminall, body for body. And the reasons and authorities in the first Conference were then renewed, and no exceptions taken to any save that in 22. H. 6. it doth not appeare that the command of the King was by his mouth, which must be intended; or by his Counsell, which is all one, as is observed by *Stanford*, for the words are that a man is not replevisable by the Sherife, who is committed by the Writ or the commandment of the King, 21. Ed. 1. Rot. 2. Dors. was Cited by the Kings Counsell, that it was answered, that it concerned the Sherife of *Leicester* shire only, and not the power of the Iudges, 33. H. 6. the Kings Attorney confessed was nothing to the purpose, and yet that Booke hath beene usually cited by those that maintaine the contrary to the Declaration of the Commons. And therefore such sudden opinions as have been given thereupon are not to be regarded the foundation failing. And where it was said that the French of 36. Ed. 3. Rot. parliamenti numero 9. which can receive no answer did not warrant what was inferred thence, but that these words *Sauns disturbance mettre, ou arrest fair, & le contre per special mandement ou autre maniere* must bee understood, that the Statute should be put in execution without putting disturbance, or making arrest to the contrary by speciall command or in other manner, The Commons did utterly denie the interpretation given by the Kings Counsell, and to justifie their owne, did appeale to all men that understood the French, and upon the 7. Statutes did conclude, that their Declaration remained an undoubted truth, not controlled by any thing said to the contrary.

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Argument.
Diversitie en-
ter bayle &
mainprife.



Sir Edward
Lisletons
Presidents.

The true Copies of the Records not printed, which were used on either side of that part of the Debate.

Inter Record. Domini Regis Caroli in Thesaurario Receipt. Scacarij sui sub custodia Thesaurar. & Camerar. ibidem remanent. viz. pl. Coram ipso Domino Rege, & consilio suo, ad Parliamentum suum post Pasch. apud London in Maner' Arch-Episcopi Ebor', Anno Regni Domini Regis Ed. 3. 21. inter alia sic continetur ut sequitur, Rot. 2. indorso.

Stephanus Rabaz Vicecomes Leic. & Warw. coram ipso Domino Rege & ejus Concilio arena- tus & ad Rudem positus de hac quod cum I. B. E. H. & W. H. nuper balliv' ipsius Vicecomitis per Dom. Regem fuissent assign' ad Gaolas Domini Regis deliberand. eidem vic' quendam W. P. per quendam appellatorem ante adventum eorum Justiciariorum ibidem appellat. & capt. vivente ipso appellatore usq. diem deliberationis coram eis fact. demissat. per pleviam contra formam Statuti, &c. Et etiam quendam R. de C. qui de morte hominis judicatus fuit, & per eundem Vicecomit' captus, Idem Vic' per pleviam demisit contra formam Stat. & etiam idem R. sine feris coram eisdem Justiciariis ad deliberationem prad' produxit contra consuetudinem Regni, & similiter quendam Walterum filium Walteri le Persone qui per praeceptum Comit'is Warwici captus fuit dimisit per pleviam contra vocem & preceptum Domini Regis Cum idem Dominus Rex sub literas suas sub privato Sigillo suo eidem Vicecomit' precipiet quod nulli per praeceptum prad. Com. Warwici capt. aliquam gratiam vel favorem fac. &c. Et super hoc praeferat. I. B. qui presens est, & qui fuit primus Justiciarius.

ciar. pred. premiss. recordatur & pred. vicecomes dicit quoad. pred. W. P. ipse nunquam a tempore captionis ipsius W. per pred. appellatorem demissus fuit per pleviam aliquam ante adventum pred. Justiciar. Imo dicit quod per dimid. Anni ante Adventum eorum Justiciar. captus fuit. Et quoad pred. R. bene cognoscit quod ipse dimisit eum per pleviam, & hoc bene facere poterat ratione ac auctoritate officij sui, eo quod captus fuit pro quadam simplici transgressione, & non pro aliqua feloniam, pro qua replegiare non potuit. Et quoad 3. vizt. W. filium Personę bene cognoscit quod ipse captus fuit per preceptum pred. Com. Warwici & quod dimisit eum per pleviam. Sed dicit quod hoc fecit ad rogatum quorundam de Hospitio & Curia Dom. Regis qui eum similiter inde rogaverint per literas suas. Et super hoc idem vicecom. quesivit per Dom. Regem quis eum rogavit, & literas suas ei direxit, & ubi litera illa sunt, dicit quod Walterus de Langton eum per literas suas inde rogavit, sed dicit quod litera illa sunt in partibus suis Leic. Et super hoc idem Vicecomes proferit bre. Dom. Regis de privato sigillo eidem vic. direct. quod testatur quod Dominus Rex eidem Vic. precipit, quod omnes illos trans. contra pacem, & de quibus Comes Warwici ei Scire fecit, caperet, & Salvo Custodiret absq. aliqua gracia eis facienda. Et quia pred. Justiciar. expresse recordata, quod ipse & socij sui per bonum & legalem inquisitionem de militibus & alijs communibus coram eis fact. vverunt quod pred. W. de Potling dimissus fuit per pleviam per magnū tempus ante adventum eorundem Justic. usq. adventū eorundem & per vic. pred. Et etiam quia pred. vic. cognoscit quod pred. R. dimissus fuit per pleviam per ipsum vic. & hoc dic. quod bene facere potuit, eo quod captus fuit pro levi transgression. & per record. ejusdem Justiciar. compert. est quod captus fuit pro morte hominis quod est contrar. dict. pred. vicecom. & similiter quod idem Vicecom. cognovit, quod recepit literam Dom. Regis per quam Rex ei precepit, quod nullam gratiam fecerit illis qui capt. fuer. per precept. pred. Com. & idem vicecomes contra preceptum illud dimisit pred. Willielmum filium Walteri per pleviam qui captus fuit per pretextum pred. Comitum pro ut idem Vicecomes fatetur. Et sic tam ratione ipsius transgr. quam aliorum pred. incidit in penam Stat. Concest. quod pred. Vicecomes committatur prisoia juxta formam Statuti, &c.

Sir Edmunda
Littletons
Perfidens.

Sir Edward
Littletons
Presidents.

Ex Rot. Parliamenti de Anno 36. Regis
E³. Numero 9.

Primerment & la grand Chartre, & le Chartre de Forrest, & les autres Statuts fait en son temps de ses Progenitores per profits de luy, & de la Communalty soient bien & serment garder, & mise en due execution sauns disturbance mettre ou arrest faire le contre per special mandement, ou en autre manere. Nostre Seignior le Roy per assent Prelates, Dukes, Comites, Barons, & la Communaltie ad ordeine & establiſh q. les dits Chartres & Statuts soient tenus & mise en execution selon le dit Petition.

Le R^{ns}.

Numero 12.

Sta. 36. Ed. 3.
num. 22.

Petition.

Item, comme il soit contene en le grand Chartre & autre Statut q. nul home serra prise ne imprison per special mandement sauns Indictment, ou autre Proces a faire per le ley & souvent fois ad estre, & uncore est q. plesures gents sont emperches prise, & imprison sauns indictement ou autre Proces fait per le ley sur eux, sibien del chose fait hors de le Forrest. Dom. Regis cum per autre Cause q. please avant dit par le command. & deliv. ceux q. sont auxi prise per tiel special mandement contre le forme de Chartres & Statuts avant dits.

Le R^{ns}.

Item, pleſt ou Roy & si nul de sent greine veigne, & fait le plaurt & droit. serra fait a luy.

Parliament. Anno 42. Ed. 3. Numero 12.

Sta. 42. Ed. 3.
numero 12.

Petition.

Item, pur ceo q. plusors de vostre common sont disworis pur faux accusance queux sont lour accusants plus pur lour vengences & singles profits q. pur le profit del Roy ou de son peuple, & la accusois par eux ascuns ou en prison, & ascuns fait venire devant le consual le Roy per brief ex autre mandement de Roy al greise Relme du contre government de son peuple ordeine q. si de tores purpose ascun matre pur profit del Roy q. cil matre soit mando a les Iustices del un Banckes, ou del autre, ou del Assizes dent inquire ou terminere selon la ley. Et si touch la accuser ou parte dit sont si ent al Common ley, & nul home soit mise a ressondere sans presentment devant Iustices en chose de records, & per due Proces & breif original selon la auncient ley de la tere & si rien de sore avaunt, ou soit fait e' le contre soit void en ley & aceme

deeme pur error. Pur ceo q̄ cest Article est Article de le Sir Edward
grand Chartre le Roy voit ceo ley soit fait en la Petition de Littletons
mand.

Presidents.
Le Rñs.

Ex Rot. claus. de Anno Regni Regis Ed. 1. primo
numero, Membrano 10.

Thomas de Clere de Beckwith, captus & detent. in prisona de Anno 1. Ed. 1.
Northampton pro transgression forrest. habet literas Rogero de Pro transgr.
Clifford Iusticiar. citra Trent quod ponatur per Ball. Dat. apud Forr.
Sanct. Martin. Magn. London 20. die Octobr.

Membrano 7.

Stephanus de Lindsey capt. & detent. in prisona pro transgres. Pro transgr.
per ipsum fact. in Forrest. Regis de Lindley habet literas Regis Forrest.
Galfrido de Nevill Iusticiar. ultra Trent. quod ponatur per
ballium.

Membrano 8.

Tho. Spademan capt. & detent. in prisona de Oxon. pro morte Pro morte ho-
Willielmi Winne unde reſtat. est habet literas Regis Vicec. Oxon. minis.
quod ponatur per ball.

Membr. 9.

Willielmus de Deane, Mathews Cruſt, Roger de Bedell,
W. Falsfrench, Robertus Wyat, Alexander Hareing, Harry de
Shorne, Nicolas de Sindilonde, Turgesius de Hertfield, Robertus
de Pole, & Richardus Galias, capti & dent. in prisona de Cant.
pro morte Galfridi de Costiller unde appellati sunt habent literas
Regis Vic. Kan. quod ponantur per Ball. Dat. 23. Martij.

Claus. Anno 2. Ed. 1. Membr. 12.

Rex Roger. de Clifford, Iusticiar. Forrest. citra Trent manda- Anno 2. Ed. 1.
mus nobis quod si Robertus Unwin, Capt. & detent. in prisona Pro transgr.
nostra de Aylesbury pro transgr. Forrest. nostri invenerit nobis Forrest.
12. probos & legales homines de Ball. vera qui manucapiant
eum habere eorum Iusticiar. nostr. ad placita Forrest. cum in
partes, &c. ad Stand. inde reſtat. hunc ipsum Robertum si secun-
dam Assisam Forrest. fuer. repleg. per dictos duodecim interim tra-
ditur in Ball. sicut prad. est & habeatis nomina illorum 12. homi-
num. Et hoc bre. &c. Dat. 27. Februar.

Claus. Anno 12. Ed. 1. nu. 14.

Sir Edward
Littletons
Presidents.
De ponend. in
Ball.
Pro transgr.
Forr.

Winimus de Brirot, Galfrius de Wickram, & Hugo de Stone, detent. in prifona Regis de Ailesbury pro transgr. venationis. habuit bre. direct. Rogero de Clifford Iusticiar. Forrest. quod si secundum Assiss. Foristacerunt repleg. usq. advent. Iusticiar. Regis ad plita Forrest. cum in partes illas venerunt. dat. apud Coddington 28. die Decembr.

Nu. 15.

Pro morte ho-
minis.

Guilbert Courvey de Keddington, & Hugo le Taylor de Keddington Capt. & detent. in prifona sancti Edmundi pro morte Buning unde reſtati sunt habuerint literas Regis Vic. Suff. quod ponantur per Ball.

Anno 3. Ed. 1.

Claus. Anno 3. Ed. 1. num 11.

Pro morte ho-
minis.

Galfrius de Hairton captus & detentus in prifona Regis Ebor. pro morte Adel Clerke unde reſtatus est habet literas Regis vic. Ebor. quod ponatur per Ball. Dat. apud Westminst. 14. Junij.

Num. 20.

Pro morte ho-
minis.

Robertus Belbarbecaptus et detentus in prifona de Newgate pro morte Thoma Pollard unde reſtatus est habet literas Regis Vic. Midd. quod ponatur per Ball. Dat. 28. Februar.

Claus. nu. 4. Ed. 1. Membr. 5.

Pro transgr.
Forrest.

Mandatum est Rado de Sandwico quod si W. de Pattare, & Iohannes filius ejus, Walterus Home, Walterus Corwen, Henricus Path, & W. Cadegan, capt. & detent. in prifona Regis de Sct. Brionell pro transgr. Forr. unde reſtati sunt invenerint sibi 12. probos & legales homines de Ballia sua, vizt. quilibet eorum 12. qui eos manucap. habere coram Iusticiar. Regis ad plita Forrest. cum in partes illas venerint ad stand. inde reſtat. tunc ipsos Willielm. Iohannem, Walterum, Walterum, Henricum, & Willielm. pred. 12. si secundum Assiss. fuer. repleg. tradantur in Ball. ut pred. est si habent ibi nomina illorum 12. hominum & hoc bre. Test. Rege apud Bell. locum Regis 29. die Augusti.

Claus. Anno 4. Ed. 1. membr. 16.

Henricus filius Rogeri de Kemi & Cottesbrooke capt. & detent.

in

in prisona nostra Northampton pro morte Symonis de Charvettell Sir Edward unde appellatus est habet literas Regis Vic Northampton quod Littletons ponatur per ballium.

Presidents.
Pro morte ho-
minis.

Claus. Anno 5. Ed. 1. membr. 1.

Mandatum est Galfrid. de Nevil Iusticiar. Forrest. uliv. Trent. Pro transgr. quod S. Walterus de le Greene Captus & detentus in prisona de Forrest. Nottingham pro transgr. For' invenerit sibi 12. probos & legales homines qui eum manucapiant. &c. ad stand' inde re'ctat. secundum assis. For' Regis tunc ibidem Walter. pred. 12. traditur in Ballium sicut pred. est. Dat. 16. Novemb.

Membrano 2.

Thomas de Upwell, & Iuliana uxor ejus Capt. & detent. Pro morte ho- in prisona de Wynbotesham pro morte Stephani Southet unde re- minis. ctat. sunt habent literas Vic Norff. quod ponantur per Ballium. Dat. apud Rothelm 28. die Septembr.

Claus. Anno 6. Ed. 1. nu. 2.

Bithernus Pestle captus & detentus fuit in prisona Rs de Nor. Pro morte uxor. wici pro morte Iuliana quondam uxor' sua unde re'ctatus est & habet literas Vic Norff. quod ponatur per Ball' Teste Rege apud Westminst. 12. Novemb.

Membr. 4.

Mandatum est Vic Nottingham quod si Tho. de Cudart re'ctat. Pro transgr. Forr. de transgr. Forrest. quod fecisse dicebatur in Forrest. de Sherwood invenerit sibi sex probos & legales homines de Ballia sua qui cum Manncap' habere coram rege ad mandatum regis ad Stand. re'ct. coram rege cum Rex inde cum eo loqui voluerit tunc pred. Tho. pred. 6. hominibus trad. in Ball' juxta manncapt. pred. Dat. 12. die Decembr.

Membr. 4.

Tho. Burrell captus & detent. in prisona Regis Oxon. pro morte Pro morte homi- Galfrid. Geffard unde re'ctat. est habet literas Dom. Regis Vic nis. Devon. quod ponatur per Ball'.

Claus. Anno 1. Ed. 2. Membr. 1.

Iohannes Brynn de Rollin Wriith capt. & detent. in prisona Pro morte ho- minis.

Sir Edward
Littleton
President.

Regis Oxon. pro morte Johannis de Sutton unde reſtat. eſt habet li-
teras Regis Vic. Oxon. quod ponatur per Ball. uſq; prim. Aſſiſſ.
ſi ea occaſione, &c. Teſte Rege apud Briſtoll 28. Iuny.

Membr. 2.

W. Spore Capell. capt. & detent. in priſona Regis Oxon. pro
morte Johannis Spore unde indiſtat. eſt & habet literas Regis
Vic D'evon. quod ponatur per Ballium uſq; ad prox. Aſſiſſ. ſi ea
occaſione, &c. Teſte rege apud Windſor 28. die May.

Numero 10.

Pro morte homi-
nis.

Guilbertus Fairchild capt. & detent. in Gaole Regis Dorce-
ſter pro morte Henrici de Langton unde indiſtat. eſt habet literas.
quod ponatur per Ballium uſq; ad prim' aſſiſſ. Teſte Rege apud
Weſtminſt. 28. Februar.

Clauf. Anno 2. Ed. 2. Membr. 1.

Pro morte ho-
minis.

Willielmus Sandie de Cobham Capt. & detent. in priſona Re-
gis Cant. pro morte Johannis de Sprink, Johannis Ermona de Dun-
berke unde reſtat. eſt habet literas Regis Vic' Kanc' quod pon-
atur per Ball' uſq; ad primam Aſſiſſ. Si ea occaſione, &c. Teſte rege
apud Ceſtre. 29. Iuny.

Pro morte ho-
minis.

Radus Coryun capt. & detentus in Gaole Regis de Lincolne pro
morte Willielmi Filij Symonis Porter unde reſtat. eſt & habet li-
teras Regis Vic' Lincolne quod ponatur per Ball' uſq; ad primum
Aſſiſſ. Si ea occaſione, &c. Teſte rege apud Sheene 3. die Iuny.

Membrana 7.

Pro morte ho-
minis.

Johannes de Githera Capt' & detent. in priſona Regis Ebor'
pro morte Mathei Sampſon de Ebor' unde reſtat. eſt habet li-
teras Regis Vic' Ebor' quod ponatur per Ball' uſq; ad prim' Aſſiſſ.
Dat. apud Langele 50. die Aprilis.

Clauf. 3. Ed. 2. Membr. 3.

Pro morte ho-
minis.

Adam de Pepper captus & detent. in Gaole Regis Ebor' pro
morte Henrici de Syner' de Baſtrick unde reſtat. eſt habet literas
Regis Vic' Ebor' quod ponatur per Ball' uſq; ad primum Aſſiſſ.
Teſte rege apud Weſtminſt. 7. die Febr.

Numero 14.

Sir Edward

Margareta uxor Willielmi Colbot capta & detenta in Gaol Littletons Regis Norwici pro morte Agnetis filia Willielmi Colbot, & Ma- Presidents. rilda sororis ejusdem Agnetis unde reſtata eſt habet literas Regis Pro morte 2. Vic' Norff. quod ponatur per Ball' Teſte rege apud Sheene 22. femes. Ianuar.

Numero 16.

Iohannes Frere Captus & deſent. in Gaole Regis Oxon. pro morte Ada de Egeleigh unde reſtata eſt habet literas Regis Vic' Devon. quod ponatur per Ball' Teſte rege apud Weſtmiſt. 8. Decembr.

Clauſ. Anno 4. Ed. 2. Membr. 7.

Robertus Shrene Capt. & deſent. in Gaole Regis de Colcheſter pro morte homi. pro morte Roberti le Maigne unde reſtat. eſt habet literas Regis Vic' Eſſex quod ponatur per Ball' uſq; ad prim' Aſſiſſ. Dat. 22. die Maij.

Numero 8.

W. Filius Roberti le Fiſhere de Shirborne capt. & deſent. in Gaole Regis Ebor' pro morte homi. pro morte Roberti le Monius de Norton unde reſtat. eſt habet literas Regis Vic. Ebor. quod ponatur per Ball. uſq; ad primam Aſſiſſ. Dat. 25. April.

Clauſ. Anno 4. Ed. 2. Numero. 22.

Thomas Ellis de Stanford capt. & deſent. in priſona Regis Lincolne pro morte Michaelis filii Willielmi de Fodering unde reſtat. eſt habet literas Regis Vic. Lincolne quod ponatur per Ball' uſq; ad prim. Aſſiſſ. Teſte Rege apud novum monaſterium 8. die Septembr.



Mr. Seldens
Argument.

The Argument which by the
Command of the House of Commons was
made at their first conference with the Lords,
touching the personall libertie of the person of every
Free-man, out of Presidents of Record, and
resolutions of Judges in for-
mer times.

MY LORDS,



Our Lordships have heard from the Gentle-
man that last spake a great part of the
grounds upon which the House of Com-
mons upon mature deliberation proceeded to
that cleere resolution touching the right of
the libertie of their persons. The many Acts
of Parliament, which are the written lawes
of the Land, and are expressly in the point, have beene read
and opened, and such Objections as have beene by some made
to them, and some Objections also made out of another Act of
Parliament, have beene cleered and answered. It may seeme
now perhaps (my Lords) that little remaines needfull to bee
further added, for the inforcement and maintenance of so fun-
damentall and established a right and libertie belonging to
every Free-man of the Kingdome. But in the examination of
questions of Law of right, besides the Lawes or Acts of Par-
liament, that ought chiefly to direct and regulate every mans
judgement, whatsoever hath beene put in practise to the con-
trary, there are commonly used also former Judgements or
Presidents, and indeed have beene so used sometimes, that the
weight of reason, of law, and of Acts of Parliament, hath been
laid by, and resolutions have beene made, and that in this very
point, only upon the interpretation and apprehension of Presi-
dents:

dents. Presidents my Lords are good *media* or proofes Mr. *Seldens* of illustration or confirmation where they agree with the Argument. expresse Law, but they can never bee proofe enough to overthrow any one law much lesse seven severall Acts of Parliament as the number of them is for the point. The house of Commons therefore taking into consideration that in this question being of so high a nature that never any exceeding it in any Court of Justice whatsoever all the severall wayes of just examination of the truth should be used, have also most carefully informed themselves of all former judgements or presidents concerning this great point either way, and have beene no lesse carefull of the due preservation of his Majesties just prerogative then of their owne rights. The Presidents here are of two kinds, either merely matter of record, or else the former resolutions of the Judges after solemn debate in the point.

This point that concernes presidents the House of Commons have commanded me to present to your Lordships, which I shall as briefly as I may, so I doe it faithfully and peripicuously. To that end my Lords, before I come to the particulars of any of those Presidents, I shall first remember to your Lordships, that which will seeme as a generall key for the opening and true apprehension of all them of Record, without which key no man unlesse he be versed in the entries and course of the Kings Bench can possibly understand them.

In all cases my Lords where any right or libertie belongs to the Subjects by any positive law written or unwritten, if there were not also a remedie by Law for the enjoying or regaining this right or libertie when it is violated or taken from him, the positive law were most vaine and to no purpose, and it were to no purpose, for any man to have any right in any land or other inheritance, if there were not a knowne remedie, that is an action or writ, by which in some Court of ordinary Justice he might recover it. And in this case of right of libertie of person, if there were not a remedie in the Law for regaining it when it is restrained, it were of no purpose to speak of lawes that ordain it should not be restrained. Therefore in this case also I shall first shew you

Mr. Seldens
Argument.

the remedie that every Free-man is to use for the regaining of his libertie when he is against law imprisoned, that so upon the legall course and forme to be held in using that remedie, the Presidents or Judgements upon it, for all Judgements of Record rise out of this remedie, may bee easily understood. There are in law divers remedies for enlarging of a Free-man imprisoned, as the writts of *Odio & Atia*, and of *Homine replegiando*, besides the common or most knowne Writs of *Habeas Corpus*, or *Corpus cum causa*, as it is called also.

The first two Writs are to be directed to the Sherife of the County, and lie in some particular Cases, with which it would be untimely for me to trouble your Lordships, because they concerne not that which is committed to my charge. But that Writ of *Habeas Corpus*, or *Corpus cum causa*, is the highest remedie in Law for any man that is imprisoned, and the only remedie for him that is imprisoned by the speciall command of the King, or the Lords of the Privie Counsell, without shewing cause of the commitment, neither is there in the law any such thing, nor was there ever mention of any such thing in the Lawes of this Land, as a Petition of right to be used in such cases for libertie of the person, nor is there any legall course for enlargement to be taken in such cases, howsoever the contrary hath upon no ground or colour of law beene pretended. Now my Lords, if any man be so imprisoned by any such command, or otherwise, in any prison whatsoever through *England*, and desire by himselfe, or any other in his behalfe, this Writ of *Habeas Corpus* for the purpose in the Court of the Kings Bench, the Writ is to be granted to him, and ought not to be denied him, no otherwise then another ordinary originall Writ in the Chancery, or other common Proces of law may be denied, which amongst other things the House resolved also, upon mature deliberation, and I was commanded to let your Lordsh. know so much. This Writ is directed to the Keeper of the Prison in whose custodie the prisoner remaines, commanding him that after a certaine day he bring in the body of the prisoner, *ad Subiiciend. & recipiend. juxta quod curia concedaverit, &c. una cum causa Captionis, & detentionis*, and oftentimes *una cum causa detentionis* only, *captionis* being omitted.

The

The Keeper of the prison therupon returns by what warrant *Mr. Seldens* he detaines the prisoner, and with his returne filed to his Writ, Argument. brings the prisoner to the Barre at the time appointed; When the returne is thus made, the Court judgeth of the sufficiency or insufficiency of it, only out of the body of it, without having respect to any other thing whatsoever; that is they to suppose the returne to be true whatsoever it be, if it bee false, the prisoner may have his action on the Case against the Gaoler that brought him. Now my Lords, when the prisoner comes thus to the Barre, if he desire to be bayled, and that the Court upon the view of the returne thinke him in Law to bee bayleable, then he is alwayes first taken from the keeper of the Prison that brings him, and committed to the Marshall of the Kings Bench, and afterwards bayled, and the entry perpetually is *Committitur Mariscallo & postea traditur in Ball'*, for the Court never bayles any man, untill he first become their owne prisoner, and be in *Custodia Mariscallo* of that Court. But if upon the return of the *Habeas Corpus* it appeare to the Court, that the prisoner ought not to be bayled, nor discharged from the prison whence he is brought, then he is remanded or sent back againe there to continue, untill by course of law he may be delivered, and the entrie in this Case is *Remittitur quousq³ secundum legem deliberatus fuerit*, or *Remittitur quousq³, &c.* which is all one, and the highest award or judgement that ever was or can be given upon a *Habeas Corpus*. But if the Judges doubt only whether in Law they ought to take him from the prison whence he came, or give a day to the Sherife to amend his Writ, as often they doe, then they remand him only, during the time of their doubt, or untill the Sherife hath amended his returne, and the Entrie upon that is *Remittitur* only, or *Remittitur prisona pred.* without any more. And so *remittitur* generally is of farre lesse moment in the award upon the *Habeas Corpus*, then *remittitur quousq³, &c.* howsoever the vulgar opinions raised out of the late Judgement be to the contrary. All these things are of most knowne and constant use in the Court of Kings Bench, as it cannot be doubted but your Lordships will easily know from the grave and learned my Lords the Judges.

Mr. Seldens
Argument.

These two courses, the one of the entrie of *Committitur Ad ariscall. & postea traditur in Ballium*, and the other *remitteretur quousq; &c. & Remittitur generally*, or *Remittitur prisone pred.* together with the nature of the *Habeas corpus*, thus stated, it will bee easier for me to open, and your Lordships to observe, whatsoever shall occurre to the purpose in the Presidents of record, to which I shall come now in the particular. But before I am come to the Presidents, I am to let you know the resolutions of the house of Commons touching the enlargement of a man committed by the command of the King, or the Privie Counsell, or any other, without cause shewed of such commitment; it is thus; That if a Freeman be committed or detained in prison or otherwise restrained by the command of the King, the Privie Counsell, or any other, and no cause of such commitment, detainer, or restraint, to be expressed for which by law he ought to be committed, detained, or restrained, and the same be returned upon a *Habeas Corpus* granted for the party, then he ought to be delivered and bayled.

This resolution as it is grounded upon the Acts of Parliament already shewen, and the reason of the law of the Land, which is committed to the charge of another, and anon also to be opened to you, is strengthened also by many Presidents of Record.

But the Presidents of Record that concerne this point are of two kinds, for the House of Commons hath informed it selfe of such as concerne it either way. The first such as shew expressly that persons committed by the command of the King or of the Privie Counsell without other cause shewed have beene enlarged upon bayle when they prayed it, whence it appeareth cleerely, that by the law they are bayleable, and so by *Habeas Corpus* to bee set at libertie, for though they ought not to have beene committed without a cause shewed of the commitment, yet it is true that the reverend Judges of this Land did such respect to such commitments by the command of the King or of the Lords of the Countell (as also to the commitment sometimes of inferiour persons) that upon the *Habeas Corpus*, they rarely used absolutely to discharge the persons instantly, but only to enlarge them upon Bayle, which suffici-

sufficiently secures and preserves the liberty of the Subject according to the lawes that your Lordships have already heard, Mr. Selden's Argument
 not in any of the cases is there any difference made betwene such commitments by the Lords of the Council, that are incorporated with him. The second kind of Presidents of Record are such as have beene pretended to prove the law to bee contrary, and that persons so committed ought not to be set at libertie upon bayle, and are in the nature of Objections out of Record.

I shall deliver them summarily to your Lordships with all faith, and also true Copies of them, out of which it shall appeare cleerely to your Lordships, that of those of the first kind there are no lesse then 12. most full and directly in the point to prove that persons so committed are to be delivered upon bayle, and amongst those of the other kind, there is not so much as one, not one, that proves at all any thing to the contrary; I shall first my Lords goe through them of the first kind, and so observe them to your Lordships, that such scruples as have beene made upon them by some that have excepted against them shall bee cleared also, according as I shall open them severally.

The first of the first kind is of *Ed. 3.* time, it is in *Pasche 18.* Pasc. 18. Ed. 3.
Bildeston's Case.
Ed. 3. Rot. 33. The Case was thus;

King *Ed. 3.* had committed by Writ, and that under his great Seale (as most of the Kings commands in those times were) one *Iohn de Bildeston* a Clergie man to the prison to the Tower without any cause shewed of the commitment. The Lievtenant of the Tower is commanded to bring him to the Kings Bench, where he is committed to the Marshall, but the Court askes of the Lievtenant, if there were any cause to keep this *Bildeston* in prison, besides that commitment of the King, he answered no, whereupon the Roll sayes, *Quia videtur curbre. prad. sufficient. non esse causam prad.* *Iohan. de Bildeston in prisona Dom. Regis hic detinend' idem Iohannes admittitur per manus captionem Willielmi de Wakefeld.* and some others, where the Judgement of the point is fully declared in the very point.

The second in the first kind of Presidents of Record is in the time of *H. 8.* one *Iohn Parkers* Case, who was committed to 22. H. 8. Parker's Case.

Mr. Seldens
Argument.

the Sherife of London, *pro securitate pacis*, at the suite of one Brinson, *ac pro suspitione felonie* committed by him in Gloucestershire, *ac per mandatū Dom. Rs.* he is committed to the Marshall of the Kings Bench, & *postea isto eodem termino traditur in Ball'* here were other causes of the commitment, but plainly one was by the command of the King, signified to the Sherife of London, of which they tooke notice, but some have interpreted this, as if the commitment had beene for suspicion of felonie by the command of the King, in which case it is agreeable of all hands, that the Prisoner is bayleable, but no man can thinke so of this president that observes the context and understands the Grammar of it, wherein most plainly *ac per mandatū Dom. Regis* hath no reference to any other cause whatsoever, but is as a single Cause enumerated in the returne by it selfe, as the Record cleerely sheweth, it is in 22. H. 8. Rot. 37.

35. H. 8. Bincks
Case.

The third is of the same Kings time, it is 35. H. 8. Rot. 33. John Bincks Case, he was committed by the Lords of the Counsell *pro suspitione felonie ac pro aliis causis illos moventibus qui committitur Mariscallo & immediate ex gratia curia speciali traditur in Ball'* They committed him for suspicion of felonie and other causes them thereunto moving, wherein there might be matter of State, or whatsoever else can be supposed, and plainly the cause of their commitment is not expressed, yet the Court bayled him without having regard to these unknowne causes that moved the Lords of the Counsell. But it is indeed some difference from either of those other 2. that precede, and from the other 9. also that follow, for it is agreed, that if a cause be expressed in the returne, inso much that the Court can know why he is committed, that then he may be bayled, but not if they know not the cause, now a man is committed for a cause expressed, & *pro aliis causis Dominos de Consilio moventibus*, certainly the Court can no more know in such a case what the cause is, then any other.

2. & 3. P. &
Mar. Overtons
Case.

The fourth of these is in the time of Queene Mary, it is Pasche 2. & 3. P. & Mar. Rot. 58. Overtons Case, Richard Overton was returned upon a Habeas Corpus, directed to the Sherifes of London, to have beene committed to them and deteyned *per mandatum pranobilium Dominorum honorabilis consilij Domi-*

Dominorum Regis & Regina, Qui committitur Marr. & Mr. Seldens immediate traditur in Ball. In answer to this President, or by Argument way of objection to the force of it, It hath beene said that this Overton at this time stood indicted of high treason. It is true, he was so indicted, but that appeares in another Roll, that hath no reference to the returne, as the returne hath no reference to that Roll, yet they that object this against the force of this President, say that because he was Indicted of Treason, therefore though he were committed by the Command of the Lords of the Counsell without cause shewed, yet he was bayleable for the Treason, and upon that was here bayled; Then which objection nothing is more contrary, either to law or common reason. It is most contrary to law, for that clerely every returne is to be adjudged by the Court out of the body of it selfe, and not by any other collaterall or forraigne Record whatsoever. Therefore the matter of Indictment here, cannot in law be cause of bayling of the Prisoner, And so it is ayerse to all common reason, that if the objection bee admitted, it must of necessitie follow, that whosoever shall be committed by the King, or the Privie Counsell, without cause shewed, and bee not indicted of Treason or some other offence, may not be enlarged, for by reason of supposition of matter of State. But that whosoever is so committed, and withall stands so indicted though in another Record may bee enlarged, whatsoever the matter of State be for which he was committed. The absurditie of which assertion needs not a word for further confutation, as if any of the Gent. in the last judgement, ought to have beene the sooner delivered, if hee had beene also Indicted of Treason, if so, Traitors and Fellons have the highest priviledge in personall libertie, and that above all other Subjects of the Kingdome.

The fifth of this kind is of Queene *Maries* time also, 4. & 5. Phil. it is *Pash. 4. & 5. P. & Mar. Rot. 45.* the Case of *Edward Newport*, hee was brought into the Kings Bench by *Habeas Corpus* out of the Tower of London, *Cum causa, viz. Quod Commissus fuit per mandatum Concilii Domina Regina qui committitur Marr. & immediate traditur in Ballium.* Newports Case.

**M. Seldens
Argument.**
Vn objection
Rñde.

To this the like answer hath beene made, as to that other Case of *Overtons* next before cited, they say that in another roll of another terme of the same yeare, it appeares he was in question for suspicion of Coyning, and it is true he was so, But the returne and his Commitment mentioned in it have no reference to any such offence, nor hath the Baylement of him relation to any thing but to the absolute commitment by the privie Counsell: So that the answer to the like objection made against *Overtons* Case satisfies this also.

9 *El. Law ences*
Case.

The sixth of these is of *Queene Elizabeths* time, *Mich. 9. El. Rot. 35*: the case of *Tho. Lawrence*; this *Lawrence* came in by *Habeas Corpus*, returned by the Sheriffs of London to be detained in prison *per mandas. Consilij Domina Regina qui Committitur Marr. & super hoc traditur in Ballium.*

Objection
Rñde.

An objection hath beene invented against this also, it hath beene said that this man was pardoned, and indeed it appeares so in the Margin of the roll, where the word *pardonatur* is entered, but clearly his enlargement by Bayle was upon the body of the returne onely, unto which that note of pardon in the Margin of the roll hath no relation at all, and can any man think, that a man pardoned (for what offence soever it be) might not as well be committed for some *Arcanum*, or matter of State, as one that is not pardoned, or out of his innocencie wants no pardon?

9 *El. Constables*
Case.

The seventh of these is in the same yeare, and of Easter Terme following, it is *P. 9. El. Rot. 68 Ro. Constables* Case, he was brought by *Habeas Corpus* out of the Tower, and in the returne it appeared he was committed there, *per mandatum privati Consilij dicta Domina Regina qui Committitur Marr. & postea isto eodem ter. traditur in Ball.* The like objection hath beene made to this, as that before of *Lawrence*, but the selfe same answer clearly satisfies for them both.

20 *El. Brownings*
Case.

The 8. is of the same *Queenes* time in *Pas. 20. El. Rot. 73. John Brownings* Case. This *Browning* came by *Habeas Corpus* out of the Tower, whether he had beene committed, and was returned to have been committed, *per privat. Consil. Domina Regina qui comittitur Marr. & postea isto eodem termino traditur in Ball.* To this it hath beene said, that it was done at the

Objection
Rñde.

chiefe

chiefe Justice *Provo* Chamber, and not in the Court; and thus *Mr. Seldens* the authority of the President hath beene leined or sleighted. If Argument, it had beene done at his Chamber, it would have proved at least this much, that Sir *Christopher Wray* then chiefe Justice of the Kings Bench, being a grave learned and upright Judge, knowing the Law to be so, did Bayle this *Browning*, and enlarge him, and even so farre the President were of value enough; but it is plaine, that though the *habeas corpus* were returnable, as indeed it appeares in the Record it self, at his Chamber in Serjeants Inn; yet he only committed him to the Kings Bench presently, and referred the consideration of enlarging him to the Court, who afterward did it: For the Record sayes, *Et postea isto eodem termino traditur in Ball.* which cannot be of an enlargement at the chiefe Justice Chamber.

The ninth of this first kind is *Hill. 40. El. Rot. 62. Edward 40 El. Flaye-Hare Courts* Case, hee was imprisoned in the Gatehouse, and *Courts* Case. that *per Dominos de privato Consilio Domina Regina pro certis causis eos moventibus & insignotis*, And upon him *habeas corpus* was returned to be therefore onely detained, *Qui Comittitur Marr. & postea isto eodem termino traditur in Ball.* To this never any colour of answer hath beene yet offered.

The tenth is *Catesbies* Case in the vacation after *Hill. Term 43 El. Carf. 43. El. Rot. Robert. Catesbie* was committed to the Fleet *per war-bies* Case. *rantum diversor. pro nobilium viroy de privato Consilio Domine Regina:* He was brought before Justice *Fenner*, one of the then Iustices of the Kings Bench by *Habeas Corpus* at Winchester house Southwark, *Et homiss. fuit Marr. per prefat. Edwardum Fenner & statim traditur in Ball.*

The eleventh is *Rich Beckwits* Case, which was in *Hill. 12 12 Jac. Beck-* of *K. James Rot. 153.* He was returned upon his *Habeas corpus* *wits* Case. to have beene committed to the Gatehouse by divers Lords of the privie Counsell, *Quicommittitur Marr. & postea isto eodem termino traditur in Ball.*

To this it hath bin said by some, that *Beckwits* was bayled upon a letter, written by the Lords of the Counsell to that purpose to the Iudges, but it appeares not that there was ever any letter written to them to that purpose, which though it had beene, would have proved nothing against the authority of the
Objection
Rñde.

Record,

Mr. Seldens
Argument.

Record: for it was never heard of that Judges were to be directed in point of law by letters from the Lords of the Counsell, although it cannot bee doubted, but that by such letters, sometimes they have been moved to bayle men that would or did not ask their enlargement without such letters, as in some examples I shall shew your Lordships among the presidents of the second kind.

14 Jac. Sir
Tho. Moun-
sons Case.

The 12 and last of these, is that of Sir *Tho. Mounsons Case*; it is *Mich. 14. Jac. Rot. 147*. Hee was committed to the Tower *per warrantum a diversis Dominis de privato Consilio Domini Regis locum tenenti directum*, And he was returned by the Lieutenant to be therefore detained in prison, *qui committitur Marr. Et super hoc traditur in Ball.*

Objection
Ride.

To this it hath beene answered, that every body knowes by common fame, that this Gentleman was committed for suspicion of the death of Sir *Tho. Overbury*, and that hee was therefore bayleable; a most strange interpretation, as if the body of the returne and the warrant of the privie Counsell, should be understood, and adjudged out of fame onely; was there not as much a fame why the Gentlemen that were remanded in the last judgement were committed, and might not the selfe same reason have served to enlarge them, their offence (if any were) being I think much less: then that for which this Gentleman was suspected?

And thus I have faithfully opened the number of 12 Presidents most expresse in the very point in question, and cleared the objections that have beene made against them.

And of such presidents of Record as are of the first kinde, which prove plainly the practise of former ages, and judgement of the Court of Kings Bench, in the very point, on the behalfe the Subject, my Lords hitherto.

I am come next to those of the second kind, or such as are pretended that persons so committed are not to be enlarged by the Judges upon the *habeas corpus* brought, but to remaine in prison still at the command of the King or the privie Counsell.

Presidents del
i. fort. vouch
p le Roy.

These are of two natures, the first of these are where some assent of the King or the privie Counsell appears upon the
inlarge.

inlargement of a prisoner so committed, as if that because such assent appears, the enlargement could not have been without such assent. Mr. Seldens Argument.

The second of this kind are those which have been urged as expresse testimonies of the Judges denying bayle, and in such cases, I shall open these also to your Lordships, which being done, it will most clearly appear, that there is nothing at all in any of these that makes any thing at all against the resolution of the house of Commons touching this point: nay, it is so farre from their making any thing against it, that some of them add good weight also to the proove of that resolution.

For those of the first nature of this second kind of Presidents, they begun in the time of *H. 7. Tho. Brugge*, and divers others were imprisoned in the Kings Bench *ad mandatum Dom. Regis*, they never sought remedy by *habeas corpus*, or otherwise, for ought appears: But the Roll sayes, that *Dominus Rex relaxavit mandatum*, and so they were bayled. But can any man think that this is an Argument either in Law or common reason, that therefore they could not have been bayled without such assent? It is common in Cases of common persons, that one being in prison for surety of the peace or the like, at the suite of another, is bayled upon the release of the party plaintiff; Can it follow, that therefore he could not have been bayled without such release? nothing is more plain then the contrary. It were the same thing to say, that if it appears, that if a plaintiff be non suit, therefore unless he had been non suit, he could not have been barred in the suit. The Case last cited is, *Mich. 7. H. 7. rot. 6.* Temps H. 7. Brugs Case.

The very like is in the same yeare, *Hill 7. H. 7. Rot. 13.* The Case of *Will. Bartholomew Will. Chase*, and divers others, and the selfe same answer that is given to the other cleares this. H. 7. Bartholomews Case.

So in the same yeare *Pas. 7. H. 7. rot. 18.* *John Beomonds Case* is the same in substance with those other two, and the selfe same answer also satisfies that cleares them. H. 7. Beomonds Case.

The next Case is, *Mich. 12. H. 7. rot. 8.* *Tho. Yews Case*, hee was committed *ad sec. pacis*, for the security of the peace, at the suite of one *Freeman*, and besides, *ad mandatum Dom. Regis*; And first, *Freeman relaxavit sec. pacis*, and then Sir *James*

Mr. Seldens
Argument.

Hubbard, the then Kings Attorney Generall *relaxavit mandatum Dom Regis*, And hereupon he is bayled, the release of the Kings Attorny, no more proves that he could not have bin enlarged, without such release or assent, then that he could not have bin bayled, without release of surety of the peace by Freeman.

9 H. 7. Be-
chers Case.

The very like is in *Hill. 9. H. 7. rot. 11*. The Case of *Humphry Beck*, which proves no more here than the self of this kind already cited.

39 Eliza.
Broomes case

Then for this point also *Broomes Case* of *Queen Elizabeths time*, is *Trim. 39. El. rot. 128*. *Lawrence Broome* was committed to the Gatehouse *per mandatum Dom. Consilii Domina Regina*, And being returned so upon the *habeas corpus*, is first committed to the Marshalsey as the course is, and then bayled by the Court, which indeed is an expresse president, that might perhaps well have been added to the number of the first 12, which so plainly shew the practise of enlarging prisoners in this Case, by judgment of the Court upon the *habeas corpus*, But it is true, that in the scrowles of that yeare where the bayles are entred, but not in the Record of the *Habeas Corpus*, there was a note, that this *Broome* was bayled *per mandatum privati Consilii*, but plainly this is not any kind of Argument, that therefore in law he might not have beene otherwise bayled.

40 Wendens
Case.

The selfe same is to be said of another of this kind, in *Mich. 40. El. rot. 37. Wendens Case*, *Tho. Wenden* was committed to the Gatehouse by the Queene and the Lords of the Counsell *pro certis causis* generally, he is brought by *Habeas corpus* into the Kings Bench, and bayled by the Court. But it is said, that in the Scrowles of that yeare it appears, that his enlargement was *pro consensum Dom. privati Consilii*, and it is true that the Queenes Attorney did tell the Court, that the Lords of the Counsell did assent to it. Followes it therefore that it could not have beene without such assent.

43 Eliz.

Next is *Hill. 43. El. rot. 89*. when divers Gentlemen of speciall quality were imprisoned by the command of the Privie Counsell, the Queen being graciously pleased to enlarge them, sends a commandment to the Judges of the Kings Bench, that they should take such a course, for the delivering of them upon bayle as they should think fit, and they did so, and enlarged them

them upon Writs of *habeas corpus*. Followes it therefore, that this *Mr. Soldan* might not have beene done by law, if the parties themselves Argument had desired it. *Iac. Sir Is.*

So in *Tr. 1 Jac. rot. 30.* *Sir Is. Broeket* being committed to *Brockett* the Gatehouse, is returned to stand committed *pro mandatum Case*, *prout in Consilio*, and hee is enlarged *virtute warrantis a Consilio predicti*. But the same answer that satisfies for the rest before cited, serves for this also.

The last of these, is *Reynars* case, in *Mich. 12. Jac. rot. 119.* hee *12 Jac. James* was committed to the Gatehouse, by the Lords of the Counsell, *Reynar Case* and being brought into the Kings Bench by *Habeas Corpus*, is enlarged upon bayl, but this they say was upon a letter written from one of the Lords of the Counsell to the Iudges. It is true that such a letter was written, but the answer to the former presidents of this nature, are sufficient to cleare this also.

And in all these observe:

1 That it appeares not, that the party ever desired to be enlarged by the Court, or was denied it.

2 Letters either from the King or Counsell cannot alter the law in any case: So that hitherto, nothing hath beene brought on the contrary part, that hath any force or colour of reason in it.

Wee come now my Lords to those presidents of the other nature cited against the liberty of the Subject: That is, such as have beene used to mislike, that persons so committed may not be enlarged by the Court.

They are in number eight, but there is not one of them that proves any such thing, as your Lordships will plainly see upon opening them.

The first foure of them are exactly in the same words, saving that the names of the persons and the prisons differ, I shall therefore recite them all one after another, and then cleare them together.

The first is *Richard Everards* case, *Hill. 7. H. 7. rot. 18.* he and *7 H. 7. Everards* others were committed to the Marshalley of the Household *rards Case*. *per mandatum Dom. Regis*, and so returned upon a *habeas corpus* into the Kings Bench, whereupon the entry is onely *Qui commisitur Marr &c.*

The second is *Hill. 3. H. 7. Richard Cherries* case, he was committed

8 H. 7. Cherries Case.

M. Seldens
Argument.

mitted to the Major of Windsor *per mandatum Dom. Regis*, and so returned upon a *habeas corpus*, and the entry is onely *Qui committitur Marr. &c.*

H. 7. Bur-
tons Case.

The third is *Hill. 9. H. 7. rot. 14.* Christopher Burtons case, who was committed to the Marshallcy of the Household, *per mandatum Dom. Regis*, and so returned upon his *habeas corpus*, and the entry is likewise *Qui committitur Marr. &c.*

19 H. 7. Vrs-
wicks Case.

The fourth is *George Vrswicks* case, *Pas. 19. H. 7. Rot. 19.* he was committed to the Sheriffs of London *per mandatum Dom. Regis*, and returned so upon his *habeas corpus*, *Qui committitur Marr. &c.*

These foure have beene used principally, as expresse presidents, to prove that a prisoner so committed cannot be enlarged, and perhaps at the first sight, to men that know not, and observe not the course and entries of the Court of Kings Bench, they may be apprehended to prove as much, but in truth they rather prove the contrary, at least there is no colour in them of any such matter as they have beene used for. To which purpose I beseech your Lordships to call to your memories, that which I first observed to you touching the course of that Court. Where a prisoner is brought in by *habeas corpus*, he is (if he be not to be remanded) first committed to the Marshall of the Court, and then bayled as his case requires. This is so certaine as it can never be otherwise. Now these men being thus committed by the expresse command of the King, are first you see taken from the prisons whither they were first committed, wherein you may observe my Lords, that if a generall suspicion of matter of State were of force in such a case, it might be as needfull in point of State to have the prisoner remain in the prison where the King by such an absolute command committed him, as to have him at all committed; when they have taken them from the prisons where before they were, they commit them to the Marshall of their owne Court, which is but the first step to bayling them: now it appeares not indeed that they were bayled, or then *Traditur in Ball.* had followed, but nothing at all appeares that they were denied it, perhaps they never asked it, perhaps they could not finde such as were sufficient to bayle them. And in truth whensoever any man

is but removed from any prison in England (though it be for Mr. *Seldens* debt or trespass onely) into that Court, the entry is but in the Argument, selfe same syllables as in these foure cases.

And in truth if these proceedings did prove, that any of the prisoners named in them were not bayleable, or had beene thought by the Court not to have beene bayleable, it will necessarily follow, that no man living that is ordinarily removed from any prison into the Kings Bench, or that is there upon any ordinary action of debt, or action of trespassse, could be bayled, for every man that is brought thither, and not remanded, and every man that is arrested but for a debt or trespassse and was returned into that Court, is likewise committed to the Marshall of that Court, and by the selfe same entry, and not otherwise; yet these foure have been much stood on, and have strangely misled the judgement of some that did not, or would not seeme to understand the course of that Court.

The fifth of this nature is, *Edward Pages* case, it is *Tr. 7. H. 8. 7 H. 8. Pages* this might have beene well reckoned with the former foure, *Case*, had not the misentry of the Clerk only made it vary from them. *Ed. Page* was committed to the Marshallsea of the Houshold, and that *per mandatum Dom. Regis*, and returned to be therfore detained, and the entry is *Qui committitur Marr. Hospitii Dom. Regis*, This word *Marr.* is written in the Margine of the roll; this hath beene used to prove, that the Judges remanded this prisoner, if they had done so, the remanding had beene onely while they advised, and not any such award which is given when they adjudge him not bayleable; but in truth the word *Committitur* shewes, that there was not any remanding of him, nor doth that Court ever commit any man to the Marshallsea of the Houshold: and besides the word *Marr.* for *Marrescallo* in the Margine, shewes plainly that he was committed to the Marshall of the Kings Bench, and not remanded to the Marshallsea of the Houshold, for such entry of that word in the Margine, is perpetually in cases of that nature, when they commit a man to their owne prison, and so give him the first step to baylement, which he may have if he ask it, and can finde bayle; and doubtlesse these words of *Hospitii pred.* were added by the error of the Clerk for want of distinction in his understanding

ing from the *Marr.* of the Kings Bench to the Marshall of the Household.

The sixth of these is *The Casars Case*, it is 8 *Jac. rot. 99*. This *Casar* was committed to the Marshalls of the Household *per mandatum Dom. Regis*, and returned to be therefore detained, and indeed a *remissitur* is in the roll, but not a *remissitur quousque*, but onely that kind of *remissitur* which is onely used while the Court advises. And in truth this is so farre from proving any thing against the resolution of the House of Commons, That it appears that the opinion of the reverend Judges of that time was, that the returne was insufficient, and that if it were not amended, the prisoner should be discharged. For in the Book of Rules in the Court of *Mich. Terme* (when *Casars Case* was in question) they expressly ordered, that if the Stewards Marshall did not amend their returne, the prisoner should be absolutely discharged. the words of the Rule are *Nisi Seneschallus & Maniscal. Hospitiū Dom. Regis sufficiuntur retinuerint brevem de Habeas Corpus Thome Casar dier. mercur. prox. per off. quindenam scilicet Martium. def. exonerabitur*. And this is also the force of that President, but yet there hath beene an interpretation upon this rule. It hath beene said that the Judges gave this rule, because the truth was, that the returne was false, and that it was well knowne, that the prisoner was not committed by the immediate command of the King, but by the command of the Lord Chamberlaine, and thence (as it was said) they made this rule: but this kind of interpretation is the first that ever was supposed, that Judges should take notice of the truth or falshood of the return otherwise, then the body of the returne could informe them. And the rule it selfe speaks plainly of them, sufficiencie onely, and not of the truth or falshood of it.

The seventh of these is the case of *James Desmaistres, Edward Emerson*, and some others that were brewers, and were committed to the Marshalls of the Household *per mandatum Dom. Regis*, and so returned upon *habeas corpus*, and it is true, that the roll shewes that they were remanded, but the remanding was onely upon advisement, and indeed the grave and upright Judges of the time were so carefull, least upon the entry of the remanding

Emersons Case.

remanding, any such mistake might be, as might perhaps mis- *Mr. Selden*
lead posterity in so great a point, that they would expressly *Argument*
have this word (immediate) added to the *Remittitur*, that so
all men that should meet with the roll might see, that it was
done for the present onely, and not upon any debate of the que-
stion. And besides, that there is no *quousq;* to it, which is usu-
ally added; when the highest award upon debate or resolution
of this kind is given by them.

The eighth of these is the Case of *Saltonstall*, it is *Hill. 12. 12. Jam Sir Sa-*
Iac. Sir Samuel Saltonstall was committed to the Fleet, *per man- muel Saltonstall*
datum Dom. Regis; and besides, by the Court of Chancery, *Case.*
for disobeying an order of that Court, and is returned upon his
habeas corpus, to be therefore detained. And it is true that a
Remittitur is entred in the roll; but it is onely a *remittitur pri-*
soner predict. without *quousq;* *secundum legem de liberatus fue-*
rit, and in truth it appears on the Record, that the Court gave
the Warden of the Fleet, three severall dayes at severall times,
to amend his returne, and in the interim *remittitur persone pred.*
Certainly if the Court had thought that the returne had beene
good, they would not have given so many severall dayes to
have amended it, for if that *Mandatum Dom. Regis* had beene
sufficient in the Case, why need it to have beene amended.

The ninth and last of these is, *Tr. 13. Iac. Rot. 71.* The Case *13. Iac. Sir Sa-*
of the same *Sir Samuel Saltonstall*, he is returned by the Warden *muel Saltonstall*
of the Fleet, and in the Case before, and generally *remittitur*, is *Case.*
in the roll which proves nothing at all, that therefore the
Court thought he might not by law be enlarged; and besides
in both cases hee stood committed also for disobeying an order
in the Chancery.

These are all that have beene pretended to the contrary in
this great point, and upon the view of them thus opened to
our Lordships, it is plaine, that there is not one, not so much
as one at all; that proveth any such thing, as that persons com-
mitted by the command of the King, or the Lords of the Coun-
sell without cause shewed, might not be enlarged, but indeed
the most of them expressly prove rather the contrary.

Now my Lords, having thus gone through the Presidents of
Record, that concerne the point of either side, before I come to

the other kind of Presidents, which are the solemn resolutions of Judges in former times, I shall (as I am commanded also by the House of Commons) represent unto your Lordships somewhat else; they have thought very considerable; with which they met, whilst they were in a most carefull enquiry of whatsoever concerned them in this great question.

In my Lords a draught of an entry of a judgement in that great case lately adjudged in the Court of Kings Bench, when divers Gentlemen imprisoned *per speciale mandatum Dom. Regis*, were by the award and order of the Court, after solemn debate, sent back to prison, because it was expressly said, they could not in Justice deliver them, though they prayed to be bayled. The case is famous, and well known to your Lordships, therefore I need not further to mention it, as yet indeed there is no judgement entered upon the Roll, but there is room enough for any kind of judgement to be entered. But my Lords, there is a form of a judgement, a most unusual one; such a one as never was in any such case before (for indeed there was never before any Case so adjudged) and thus drawne up n by a chiefe Clerk of that Court (by direction of M. Attorney general) as the House was informed by the Clerk, in which the reason of the judgement, and remanding of those Gent. is expressed in such sort, as if it should be declared upon Record for ever, that the Lawes were, that no man could ever be enlarged from imprisonment that stood committed by such an absolute command.

The draught is onely in Sir John Henninghams Case, being one of the Gent. that was remanded, and it was made for a form for all the rest. The words of it are after the usuall entry of a *Curia advisare vult* for a time. That *visis retur. predict. nec non dispersis antiquis recordis in Curia hic remaneum consimiles casus continentibus maturaq; deliberatione, inde prius habita eo quod milia specialis causa captionis sive detentionis pred. Iohannis ex primis sed generaliter quod detentus est in prisona pred. per speciale mandatum Dom. Regis ideo pred. Iohanes remittitur prefat. custodi Mar. Hospitiis pred. Salvo custodiend. quousq; &c. that is, quousq; legem deliberatus fuerit. And if that Court that is the highest for ordinary Justice, cannot deliver him *secundum legem*.*

Legem. What law is there I beseech you my Lords, that can be sought for in any other inferiour Court to deliver him. Now my Lords, because this draught, if it were entered in the Roll, (as it was prepared for no other purpose) would be as great a declaration, contrary to the many Acts of Parliament already cited, contrary to all Presidents of former times, and to all reason of Law, to the utter subversion of the highest liberty and right belonging to every free man of this Kingdome, and for that especially; also it supposes that divers ancient Records had been looked into by the Court in like cases, by which Records their judgements were directed, whereas in truth, there is not any one Record at all extant that with any colour (not so much indeed as with any colour) warrants the judgement, therefore the House of Commons thought fit also, that I should with the rest that hath beene said shew this draught also to your Lordships, I come now to the other kind of Presidents, that is, solemne resolutions of Iudges, which being not of Record, remaine onely in authentique copies: but of this kinde there is but one in this case, that is the resolution of all the Iudges in the time of Queene *Elizabeth*. It was in the 34 of her raigne, when divers persons had beene committed by absolute command, and delivered by the Iustices of the one Bench or the other, whereupon it was desired, that the Iudges would declare in what cases persons committed by such command were to be enlarged, hath beene variously cited, and variously apprehended.

Mr. Solicitor
Argument.

The House of Commons therefore desiring with all care, to informe themselves as fully of the truth of it, as possibly they might, got into their hands from a member of their House, a Book of selected cases, collected by a reverend and learned chiefe Iustice of the common place, that was one of them that gave the resolution, which is entered at large in that booke: I meane the Lord chiefe Iustice *Anderson*, it is written in the booke with his own hand, as the rest of the book is, and howsoever it hath beene cited, and was cited in that great judgement upon the *habeas corpus* in the Kings Bench, as if it had been, that upon such commitments the Iudges might not sayle

*Mr. Selden's
Argument.*

the prisoners, yet it is most plaine that in the resolution it selfe, no such thing is contained, but rather expressed the contrary, I shall better represent it to your Lordships by reading it, then by opening it.

Then it was read here.

If this resolution doth resolve any thing, it doth indeed upon the Iurie resolve fully the contrary to that which hath bin pretended, and enough for the maintenance of the ancient and fundamentall point of liberty of the person, to be regained by *habeas corpus* when any is imprisoned. And I the rather thought it fit now to read it to your Lordships, that it might be at large heard, because in the great judgement in the Kings Bench, though it were cited at the barre, as against this point of personall liberty, as also at the Bench, yet though every thing else of Record that was used, were at large read openly, this was not read either at Barre or Bench; for indeed if it had, every hearer would easily have knowne the force of it, to have been indeed contrary to the judgement.

My Lords, having thus gone through the Charge committed to me by the House of Commons, and having thus mentioned to your Lordships, and opened the many Presidents of Records, and that draught of the judgement in this like case, as also this resolution, I shall now (as I had leave and direction given me, lest your Lordships should be put to much trouble, and expence of time in finding or getting Copies at large of those things which I have cited,) offer also to your Lordships authentique Copies of them all, and so leave them, and whatsoever else I have said; to your Lordships farther consideration.

The



The true Copie of the Presidents
of Record, in one of the Arguments made
at the first conference with the Lords tou-
ching the libertie of the person of
every Free-man.

*Inter Record. Dom. Regis Caroli in Thesaurio Recept. Scaccarij
sui sub custodi Dom. Thesaurar & Camerar ibidem Reman-
nen. vizt. Placita coram Domino Rege apud Westmonasteriū
de Ter' Pasche Anno Regis Edwardi 3. post conquest Ang-
lie 18. inter alia sic continetur ut sequitur.*

Rot. 33.

Adhuc de termino Pasche.

Dominus Rex mandavit delicto & fideli suo Roberto London,
de Dalton Constabular' Turris sue London vel 18. Ed. 3. Bilde-
ejus locum tenent' tre. suum in hac verba Ed- stons Case cite
wardus Dei gracia Rex Anglie, Francia, & devant, fo. 33.
Dominus Hibernie delicto & fideli suo Roberto de
Dalton Constabular' Turris sue London vele us
locum teneum salutem mandamus quod Johannem Bildeffon cap-
pellan' quem vic. nostr. London ad mandatum nostrum apud pred.
Turrim vobis liberavit ab eisdem recipiatis & in prisona nostra
Turris London pred. Salvo Custodiar fac' quousq; super hoc aux-
erimus emandand. Teste meipso apud Turrim nostram London 30.
die Marcij Anno Regni nostri Anglie 16 Regni vero nostri
Francie 30. Et modo sct. in Crast Assen. Dom. anno Rege nunc
& coram Domino Rege apud Westminst. venit Iohannes de Wyn-
wicke locum teneus pred. Constabular & adduxit coram Iustici-
ar' hic in Cr. pred. Iohannem de Bildeffon quem als a prefat.
Vicecomit. r. r. brevis pred. recepit. &c. Et dixit quod
ipse a Domino Rege hnt mandat, ducend. & liberand corpus
ipsius

ipſus Iohannis de Bildeſton prefat. Juſticiar. hic, &c. Et queſti-
tum eſt de pred. Iohannem de Wynwicke ſi quam aliam detentio-
nem prefat Iohannis de Bildeſton habeat Camm. Qui dicit quod
non niſi bre. pred. tantum, Et quia videtur cur. bre. pred. ſufficien-
non eſſe coram pred. Iohannis de Bildeſton priſon. Mar^r Regis hic
retinen. &c. Idem de Iohannes dimittitur per manus Willielm. de
Wakefield reſtoris Eccell. de willingham Iohannis de Wynwicke in
Com. Kanc. Iohannis de Norton in Com. Norff. Nicolai de Blan-
deſford in Com. Middl. & Rogeri de Bromley in Com. Stafford, quē
cum manuceperunt Habend. in eum Coram Domino Rege apud in
Oſtabis Sancti Trin. ubicunq; &c. vizt. Corpus pro corpore, &c.
Ad quos Oſtabis Sancte Trin. Coram Domino Rege apud Weſtm.
den. pred. per manus pred. Et ſuper hoc mandavit Juſticiar. ſuis hic
quoddam bre. ſuum Clauſ. in hic verba Edwardus Dei gracia
Rex Angla, & Francie, & dominus Hibernie, delictis & ſid li
ſuis Willielmo Scot, & ſocijs ſuis Juſticiar^r ad placita coram nobis
tenend. assignat ſaltem cum nuper mandaverimus delicto, & ſideli
noſtro Roberto de Dalton Conſtabular^r Turris noſtre London vel
ejus locum tenen. quod Iohannem de Bildeſton Capellauum Capt. &
detens. in priſona turris pred. hoc preceptum noſtrum pro ſuſſuptione
contra factionis magni Sigilli noſtri cum Attachiat. & alias Cam-
ſis capcon. & detentionem pred. tangen. ſalvo & ſecur^r duci fac^r
Coram nobis in Cron Aſcen. Dom. ubicunq; tunc fuiſſemus in
Anglia perſone Marreſcall. noſtre coram nobis liberand. in eadem
quonſq; per quendam informatorem eſſemus plenius informat.
Cuſtod. & iuta inde informatione pred. ulterius pred. ſuper hoc
fieri facerimus quod fore viderimus faciend. ſecundum legem, &
conſuetudinem Regni noſtri Anglie nos in caſu quod dictus in-
formator non verum, Coram nobis ad informand. nos plenius ſu-
per premiſſ. volentes eidem Iohannem ea de caſa Juſticiar^r deſer-
ferr^r in hac parte vobis mandamus quod ſi pred. Informator in
Quenden. Sancti Trin. prox. fuer. vel circa non venit non ſuper hoc
plenius informat. tunc advent. ejusdem informatoris minime expe-
ctat. eidem Iohanni ſuper hoc fieri fac. Juſtic. completent. prout fore
videritis faciend. ſecundum legem & conſuetudinem Regni noſtri
Anglie Teſte incipſo apud Weſtmint. 12. Maij Anno Regni noſtri
Anglie 18. Regni vero noſtri Francⁱ 9^{to}. Quo quidem bre. reſpect.
facti. eſt proclamaco. quod ſiquis dictum regem ſuper premiſſ. in-
formare

formare vel erga ipsum Iohannem prosequi voluerit quod veniat **Mr. Sclatus**
 Et super hoc venit pred. W. de wakefield, Nicholas de Wandsworth, Iohannes Brynwyn, Iohannes de Lougham, Iohannes de Norton, & Rogero de Bromly amnes de Com' Midd' & man' pred. Iohannem de Bildeston habend. Cum Coram Domino Rege de die in diem usq; ad prefat' quinden. Sanct. Trin. iudicand. &c. Ad quem diem Anno 18. coram Domino Rege apud Westminst. venit pred. Iohannes de Bildeston per manus pred. & ita rata facta est proclam. in forma qua superius, &c. Et nullus venit ad dictum regem informand' &c. per quod concess. est quod pred. Iohannes de Bildeston erat inde sine die salva semper actione Dom. Regis si qua, &c.

De Ter^a Sanct. Hillar' Anno 22. H. 8. & per cont. Rot.

eiusdem Retul. 38.

Iohannes Parker per Ricardum Choppin, & W. Daunsey Vic^r London. London virtute brevis Dom. Regis de latitat. pro pace versus ipsum Iohannem Parker ad sect. in Iohannis Bruton eis inde directi Glouc. 22 H. 8. Parkeri case. cite ante, fo. 33. b. & coram rege duct. cum causa, vizt. quod idem Iohannes Parker capt. fuit in Civitate pred. pro secus pacis pred. & pro suspitione felonie per ipsum apud Croweall in Com. Glocest. perpetrat per nomen Iohannis Parker de Thornebury in Com. Glocest. Corser alias dict. Iohannes Charbs de eodem Com' Surgeon ac per mandatum Dom. Regis nunciat. per Robertum Pecke gen^r de Cliffords Inn qui committitur Marl^b &c. & postea isseco eodem termino traditur in Ballium Thoma Atkins de Thornebury pred. Weaver, & Willi. Nole de eadem ville & Com. usq; a die Pasche in unum men. Weaver ubicunq; &c. Et quod idem Iohannes Parker citra eundem diem personaliter comparuit coram Iusticiar' Dom. Regis ad prox. general' Gaol de liberation' in Com. Glocest. prox. tenend. ad subiyciend. & recipiend. ea omnia, & singula quod prefat. Iusticiar' de eo tunc ordinari contigerint, &c. vizt. Corpus pro corpore &c. Ad quem diem pred. Iohannes Parker licet ipsi 4. placit. solemniter exalt. ad comparend. non ven. ideo caperet cum pler' Trin. ad quem diem ex Octab. Trin. postea Trin. 24 H. 8. ex nostro quinden. Pasche. Ad quem diem bre. & vic' return' quoad Aust. tent. apud London die lune prox. post fest. Sancte Scholastice Anno Regis H. 8. 25. Iohannes Parker, & W. Nole

de Soldani *W. Nole vlt' fuer. prout paret per bro. Regis de Ter' Pasche Anno*
Argument. 25. Rs. pred.

De ter. Sanct. Mich. Anno 35. H.S. & per cont. ejus-
 dem Rot. 33.

g. H.S. Bincks.
Case cite ante
h. 33. b.

Iohannes Bincks per Ro. Baker Ar. Seneschall. Cur. Marr. &
Radium Hapton Mar' ejusdem Cur. virtute brevis Dom. Regis de
Habeas Corpus ad Subiiciend. & recipiend. & c. eis inde Direct.
Coram Domino Rege duct' cum causa, vizs. quod ante adventum
brevis pred. Iohannes Bincks captus fuit per mandatum privati
Consilij Dom. Regis pro suspitione felonie, & pro alijs causis illos
movent. & dus' ad Gaol. Marr. & ibidem detent. virtute Gaol'
pred. qui comittitur Marr, & c. Et imediate ex gra' cur. special'
pred. Iohannes Bincks de Magna Marlow in Com. Buck Wea-
ver traditur in Ball. Thoma Bignam de London Gent. & Iohan-
ni Woodward de Marlow, de Marlow pred. Taylor usq. in Crast.
Sanct. Martin. ubicunq. & c. utq. pleg. corpus pro corpore, & c.
Ad quem diem comperuit & Rebertus Drury Ar' & Iohannes
Bosse gen. Domino Justiciar. Dom. Regis ad pacem in Com. Buck,
virtute brevis Dom. Regis eis direct. Domino Regi certificave-
runt quod nullum Indictamentum de aliquibus felonis & transg.
versus ipsum Iohannem Byncks coram eis ad presens resident. Et
ulterius de fama & Gestu ipsius Iohannis Byncks per Sacrum pro-
borum & legalium homini Com. Buck. diligenter inquiri fecerunt,
& nihil aliud preter bonum de eo coram eis est compertum. Ideo
concess. est quod pred. Io. Byncks de p. missis eat inde sine die deli-
beratur per proclamationem & Iur. prout moris est.

De Ter. Pas. Anno 2. & 3. Ph. & Mar. Rot. 58.

2. & 3. P. &
Mar. Mar. O-
vertens Case
cite deuan,
fo. 33.

Ricus Overton nuper de London gen. per Tho. Leigh, & Iohan-
nem Machell vic' London virtute brevis duorum Regis & Re-
gine de Habeas corpus ad stand. rect. & c. eis inde direct. coram
Wilkelmo Portman mil' capital iusticiar. & c. duct. cum causa,
vizs. quod pred. Ri. a dus Overton 9 die Octobr. ult. preter commiss.
fuit prison de Newgate, & ibidem in eadem per ona sub custod.
dict. Vic. detent. ad mandatum per notilium duorum honorabilis
consil. pred. Regis & regine quim committer. Marr. & c. Et ime-
diatē traditur in Ball. Wilkelmo Overton de London gen. & Iohan-

ni Taylor de parochia Sancti Martini apud Ludgate London merc. usq. Octab. Trin. vizt. uterq. manncaptor pred. Mr. Seldens
Argument.
corpus pro corpore & postea Tr. 2. El. Regine, corpus Overton
& pleg. suos Octabis Michael. Ad quem diem ex mens. Pasch.
Ad quem diem vic. ret. quod ad Hust. suum tent. Guild-hall Ci-
vitas London die Lune post festum Sancti Gregor. Epi. pred. W.
Overton vel est et per bre. Pas. Anno superd.

De Te Sancti Mich. Anno 2. & 3. P. & Mar. Rot. 16.

Habet Chart. allocat. Trin. 2. & 3. Phil. & Mar.

Ricardus Overton nuper de Lond. gen. capt. Octab. Hill. pro
quibusdam alitis prodic. unde indictat est, Ad quem diem Pasch. ad
quem diem ex Cr. Animarum.

De termino Pasche 4. & 5. F. & Mar. & per cont.

eiusdem Rot. 45.

Edwardus Newport gen. per Robertum Oxenbridge mil' Con. 4. & 5. P. & Mar. Newport
calcite ante 33
Stabular. Turris pred. virtute bre. Dominor. Regis & Regine de
Habeas corpus ad Subiiciend. &c. eis inde direct. ad barr. Coram
Domino Rege & Regina duct. cum causa, vizt. quod ipse sibi
Commis. fuit per mandat. Concill. Domine Regine qui Commis-
situr Marr. & immediate traditur in Ball. prout. &c. Et postea
sine die per proclamationem virtute brevis de gestis & fama prout.
&c. Rot. 17. eiusdem Anni.

De Ter. M. Anno 4. & 5. P. & Mar. per Cons. eiusdem Ro-
tul. 17. Mem. quod 14. die Octobr. Anno 4. & 5. P. et. M. Edwardus
Newport de Hanley in Com. Wigorn. Ac capt. fuit per Ex-
bridge in Com. pred. pro suspitione contra factionis quarundem
pec. Auri vocat French crownes per ipsum & alibi in Com. Wi-
gor. fier. supposit. (& ead. causa per mandatum concill. Dominor.
Regis & Regine ad barr. tunc duct. fuit qui comisitur Marr. &c.
Et super hoc idem Edwardus Newport traditur in Ball. Thoma
Charge de Latton in Com. Essex gener. Edwardus Hales de paro-
chia Sancti Olari London gen. Johanni Baker. Clerico Ordinar.
London, Johanni Gill de parochia Sancti Tho Apostoli London
Clothworker, & Ricardus Parkes de Brownegrave in Com Wi-
gorn. yeoman usq. Octabis Hill. ubicunq. &c. vizt. qui libt. pleg.
proced. sub pena 100 l. & pred. Edwardus sub pena 200 l.

**Mr. Seldens
Argument.**

quas, &c. Ad quem diem comperini & committitur Constabular.
Turris London per mandatum Consil' Dom. Regis & Regine ibid.
salvo custodiend quousq, &c. Et postea Pas 4 & 5. P & M. traditur
in Ball. prout patet per Scriveet. finium istius ter. & postea M. 5.
& 6. P et M. exonerat. per cur. eo quod tam per Sacrorū 12. pro-
bor. & legalium hominum de pred. Com. Midd. coram Dom. Rege,
& Domina Regina hic in cur. mea parte iurat. & anerat. quam per
Sacrament. 12. probor. legal. homin. de pred. Com. Wigor. corā Ed-
wardo Saunders, & Iohanne Whiddon mil. & aliis Iusticiar' di-
ctor' Dom. Regis & Regine ad pacem ac diversis felonis transgress.
& aliis malefact. in eodem com' perpetrat. audiend. & terminand.
assignat. virtute brevis dictor. Dominor. Regis & Regine eis inde
direct. in ea parte iurat & anerat ad in querendo de gestu & fama
ipsius Edwardi compert. existit quod idem Edwardus est de bonis
gestu & fama ideo proclamatio est inde facta prout moris est secund.
legem & consuetudinem Reg. Anglie, &c. Concess. est quod pred. Ed-
wardus eat inde sine die.

De Ter. Pas. 9. El. Rot. 35.

9. El. Lawrence
Case cite de-
vant, fo 34. a.

Tho. Lawrence per Christopher' Drap. majorem Civitatis Lon-
don Ambrosiū Nicholas, & Ricu' Lambert vic. ejusdem Civitatis
virtute brevis Dom. Regine de Habeas Corpus, &c. ad subiciend.
&c. eis inde direct. & coram Domina Regina dict. cum causa, vizt.
quod 7. die Novembr. Anno regni Dom. El' nunc Regine Anglie
8. pred. Thomas Lawrence indicto brevis nominat captus fuit in Ci-
vitate pred. & in prisoa dom. Regine, Sub custod. pred. coram vic.
detent. per mandatum Consil' dom. Regine qui committitur Mar.
&c. & super hoc tradit. in Ball. prout patet per Scriveet. finum istius
ter.

De Ter. Pasch. 9. El. Rot. 68.

9. El. Constables
Case cite devant
fo 34. a.

Robertus Constable Ar' per Franciscum Jobson mil locū tenend.
Turris London virtute brevis Dom' Regine de Habeas corpus ei
inde direct & coram Domina Regina dict' cum causa vizt. quod
idem Robertus Constable pefat Francisco Jobson commissus fuit
per mandatum privat. Consil' Dom. Regine salvo custodiend. Qui
committitur Marr. &c. Et postea isto eodem Ter. traditur in Ball.
prout patet inter scriveet finum istius Ter.

20 El. Brown-
nings Case cite
devant. fo. 34 a.

Ter. Pas. Anno 20. El. & per cont. ejusdem Rot. 72.
Johannes Browning per Owen Hopson mil. locum tenen. Turris
Domina

Domine Regine London virtute brevis Habeas Corpus ad Subi- Mr. Seldons
ciend. ei inde direct. & coram dilecto & fideli Ch'ro Wray mil. Argument.
capt. Justiciar. Dom. Regine ad placita coram nobis tenend. assign-
nat apud Hospitium suum in Serjants Inne Fleet-street London die
lune, vizt. 12. die Maij duct. cum causa vizt. quod pred. Iohannes
browning Commissus fuit eidem locum tenend. per mandatum priva-
ti consil. Regine salvo custodiend. &c. Qui com. Mar. &c. &
postea isto eodem Ter. traditur in Ball' prout pat. per struēt fi-
num istius Ter.

De Ter. Sanct. Hillar. Anno 40. El. Regine & per
 cont. ejusdem Rot. 62.

Edwardus Harecort per Hugonem Parlour custod. prisone 40. El. Have-
Domine Regine de Gatehouse infra Civitatem Westminst. in Com. devant, fo. 34.
Midl. virtute brevis Domine Regine de Habeas corpus ad Subi-
cienda. &c. ei inde direct. & coram Domina Regina apud Westminst.
dicta cum causa, vizt. quod ante, advent brevis pred. scil. 7.
die Octobr. An. Regni dom. Regine nunc. 39. corpus Edwardi Har-
cort per duos privas Consil. dicte Domine regine ei commiss. fuit sal-
vo & securo custodiend. certis de causis ipsos movent, & ei igno-
ris qui committitur Marr. &c. Et postea isto eodem Ter. traditur
in Ball. prout patet per. Situe Et finum istius termini.

De Vacatione Hillar. Anno 43. El.

Robertus Catesbie per Johannem Phillips Guardian' de le Catesbies case
Flete virtute brevis Domine Regine de Habeas Corpus ad Subi- cite antea fo. 34.
ciend. &c. ei inde direct. & coram Edwardo Fenner uno Justiciar.
Domine Regine ad placita coram ipsa Regina tenend. assignat apud
Winbhester house in Burgo de Southwarke in Com. Surr. dict.
cum causa, vizt. quod pred. Robertus commissus fuit prisone pred.
primo die Marcy Anno 43. El. Warr. diversorum pre nobilium
virorum de privato consilio Domine Regine in hec verba. To the
Warden of the Fleet or his Deputie; These shall bee to will
and require you, to receive at the hands of the Keeper of the
Compter of Woodstreet, the person of Robert Catesbie E-
squire, and him to detaine and keepe safely in that Prison un-
der your charge, untill you shall have other direction to the
contrary, whereof this shall be your Warrant. Et prefat Ro-
bertus Commissus fuit Marr. per prefat Edwardum Fenner, &
statim traditur in Ball' prout patet, &c.

Mr. Seldens
Argument.

12. Iac Beck-
withs case cite
deunt. fo. 34.

Ter. Hill: Anno 43. Eliz. Regine 12. Iac. Regis.

Ricardus Beckwith gen^r per Aquilam Wykes custod. persone
de Gatehouse in Com. Midd. virtute libris Dom. Regis de habeas
corpus ad Subiiciend. ei inde direct. & coram Domino Rege duct.
cum causa vizt. quod ante advent. libris predict. scilicet 10 die
Iulii Anno Regni Dom. Jac. Regis dei gracia Anglie Franc. &
Hibernie fidei defensor. &c. 11. et Scot. 47. predict. Ricardus Beck-
with sibi Commissus fuit prisone predict. sub custod. sua virente cu-
jusdem Warrant sibi fact. et direct. per Georgium divina pravi-
dencia Cant. Archiepiscopum totius Anglie primat. et Metropoli-
tane Henric. Com. Northampton Dominum Guardiam. 5. por-
tuum et un. de privato Consil. Regis Tho. Com. Suffolk Dom.
Camerar^r Regie Familie ac sacr^r Consil. Dom. Regis Edwardum
Domini Wooton gubernator Regie familie Johannem Dom. Stan-
hoppe Vice-Camerar^r Regie Familie cujus Warrant. tenor. Se-
quitur in hec verba To. Aquila Wykes Keeper of the Gatehouse
in Westminster or his Deputy, whereas it is thought meet that
Miles Rayner, and Richard Beckwith, be restrained of the 12
liberties, and committed to the prison of the Gatehouse, These
shall be to will and require you to receive the persons of the
said Reynard and Beckwith into your charge, and safe keeping
in that prison, there to remaine untill you shall have further
order from us in that behalfe, for which this shall be your war-
rant, Dated at Whitehall the 10 of July 1613. Et postea isto
eodem termino.

De Ter. Mich. Anno. 14. Jac. per cont. ejusd. Rot. 14.7.

Turris London.
14. Iac. Sir Tho.
Mounsons case
cite devant.
fo. 34.

Thomas Mounson miles per Georgium More locum tenentem
Turris Dom. Regis London virtute libris Dom. Regis de Habeas
Corpus ad subiiciend. &c. ei inde direct. coram Domino Rege apud
Westm. duct. cum causa vizt. quod ante adventum libris pre-
dict. predict. Thomas sibi Commissus fuit per warrant. advers.
Dominis de privato Consilio Dom. Regis sibi direct. &c. Qui
Committitur Marr. &c. Et super hoc traditur in Ball^r prout patet
per Scruect. fin. istius Terminum.

7. H. 7. Bruggs
case cite de-
vunt. 34.

De Ter. Mich. 7. H. 7. & per cont. ejusdem Rot. 6.

Tho. Brugg junior, nuper de Yannington in Com^r Blarford gen^r
Iohannes

Iohanes Rawlens & te Com. & in iure de Lemster in Com. pre- *Mr. Seldene*
dict. Teoman, Robertus Sherman nuper de Lemster in Com. pre- *Argument.*
dict. Walter Thomas nuper de eadem in Com. predict. Hester Tho.
Ballard nuper de eadem in eodem Com. Smith Cadwallader ap
John Duy nuper de Kerry in Marchia Wallie in Com. Salop ad
jacen. gen. Reignald ap Breighnam, alias Sherman, nuper de
Lemster in Com. Hereford Shereman, & Thomas Turner nuper
de king sland in Com. Hereford courser, sunt in custod. Marr, ad
mandatum Dom. Regis, &c. ac pro aliis certis de causis pro ut pa-
tet alibi de record, &c. per record. istius Ter. postea isto Termin.
Dominus relaxavit mandatum suum & pro recuss. predict. com-
peraverint per Attorn. &c. Et quod utlagem versus prafat. Tho-
mam Brugg revocatur isto termino & predict. Iohannes Rawlens
profelon. & murdo predict. traditur in Ball' prout patet alib. &c.
ideo hic Marr, de ejus orbis per cur exoneratur. &c.

Ter. Hillar. 7. H. 7. & per Cont. ejusdem Rot. 18.

W. Bartholomew, Iohanes Bartholomew, Willielmus Chace, *7. H. 7. Bartha-*
Henr. Carr, Tho. Rotesley, Tho. Street, Robertus Feldone, & Henr. *lomewes calc*
Bandes sunt in custod. Marr, ad cust. mandat. Dom. Regis, &c. *cite devant. 34.*
per recept. istius termin. ac predict. Willielmus Chace pro pace
Randolpho Josselen inveniend &c. Pasche sequen. per. postea Ter-
min. sequen. dictus Dominus Rex mandatum suum predict. quo
ad Willielmus Chace relaxavit per Regis Attornas. & pro pace &
pro felon. & murdo traditur in Ball.

Deter. Pas. 7. H. 7. & per Cont. Rot. ejusdem 18.

Iohannes Beomond de Weddesbury in Com' Staff. Ar' est in cu- *7. H. 7. Beo-*
stod. Mar' ad mandatum Dom. Regis, &c. per record. istius ter' *monds calc cite*
postea scilicet Trin' 7. H. 7. sequen' predict. Iohannes Beomond *devant. fo. 34.*
de mandato predict. exoneratus existit Ideo Marr' de eo per ean-
dem Cur' exoneratus existit.

Deter' M. Anno 12. H. 7. Rot. 8.

Thomas Tew de villa de Staff. in com' Stafford Teoman, per *12. H. 7. Tewes*
Iohannem Sharn & Ricardum Haddon vir' London virtute libris *calc cite devant*
Dom. Regis d. habeas corpus, ad Sect. ipsius Regis eis inde direct. *fo. 34.*
coram Rege dict. cum causis quod id in Thomas Tew attachiatus

*x. Soldens
argument.*

fuit per Ricardum Whittington Serjant apud Baynards Castle Ci-
vitatibz predictis. & prisona dicti Dom. Regis infra eandem Civita-
tem salvo custodiend. causa pro suspitione felone apud Coventrie in
Com' Warr' per petrat. ad Suggestionem Willielmi King Inholder,
Ac in super idem Tho. Yewe detinetur in prisona predict. virtute
cujusdem alterius querel. versus ipsum ad Sectam Johannis Free-
man Sergeant de eo quod inveniat. ei in sufficiend. Secur. pacis in-
dicta cur. coram Johanne Waiger nuper vic. Ac. ulterius idem
Tho. Yewe de sent. est indicta prisona pro 23 l. debis. & 2 s. 8 d.
dampnis & custag. quos Robertus Corbet Mercer. ex cognicione
ipsius defend. versus eum recuperavis. in eadem Cur. coram eodem
Johanne Waiger nuper vic. Ac. etiam idem Tho. detinetur in dicta
prisona ad mandatum Domini Regis per Iohannem Sharwe Alder-
man Civitatis London, Qui Comittitur Marr. &c. postea scilicet
ter' Sct. Trin. Anno 19 Regis H. 7. predict. Iohannes Freeman
relaxavit secur. pacis versus eundem Tho. Yewe dictusq; Robertus
Corbet cognovit se fore satisfact. de debito & dampnis predict.
Ac. Iacobus Hubberd Attornat. general. Dom. Regis relaxavit
mandatum Dom. Regis Ac. pro suspitione felonie predict. tradidit
in Ball. Symon. Little de London Tayler & Iohanni Ashe de Lon-
don Skinner usq; Octabis Mich. ubicunq; &c. Ad qui diem com-
peruunt & Robertus Throgmorton miles unus custod. pacis predict.
com' Warr' return' quod mill. Indictament. de aliquibus felon
five transgress. versus prefat. Tho. Yewe coram eo & Sociis ad pren-
sens residet. & ulter. virtute brevis Dom. Regis sibi & Sociis suis
direct. per Sacrament. 12 probor. & legal. hominum de villa de Co-
venuriis predict. de gestu & fama predict. Thome diligenter inqni-
sicionem fecerunt. & nihil de eo preter bonum coram eo & Sociis
suis est compertum sed de bono gestu. & fama ideo concess. est quod
predict. Tho. eat inde sine die.

Ter. Hillar. Anno 9. H. 7 & per cont. ejusdem Roth. 14.

9. H. 7 Broch's
case cite d'ovant.
fo. 34.

Hunfridus Broche nuper de Canterbrig in Cantabr. Scholler;
per Robertum Willoughbie Dom' Brooke mil. Senescall. Hospitiis
Dom. Regis ac Iohannem Digbie mil. Marr' cur' Marr' Hospi-
tii predict. virtute cuiusdem brevis Dom. Regis de habeas corpus
ad Sectam ipsius Regis ad stand. rem'. &c. ad sect. partis
uslag. eis inde direct. coram Rege duct. cum causa vict. quod
idem

idem Humfridus Commissus suis Gaol. Marr^r Hospitij Dom. Re- Mr. Seldene
gis & hac de causa & non alia idem Humfridus in prisona pred. Argument
detinetur qui committitur Marr^r &c. postea Pasf. sequen^r Rex
relinquit mandatum suum Capital. Iusticiar^r per Tho. Lovest
mil. offen^r & pro nilag. pred. traditur in Ball. prout patet alibi.

De Ter^r Scte. Trinit^r anno 39 El. & per cont.

Rotli. ejusdem 113.

Lawrence Broome per Hugonem Parlour custod. prisona Do- 39. El. Broome
mine Regine de le Gatehouse virtute brevis Domine Regine de ha- case cite de vau
beas corpus ad subiiciend. &c. ei inde direct. & coram Domina fo. 35.
Regina apud Westmst duct. cum causa vizt. quod predict. Law-
rence Broome in arcta custod. sua remanet per mandatum duo-
rum de Consilio dicte Domine Regine pro certis causis eos mouen^r
qui committitur Marr^r & postea iste eodem termino traditur in
Ball. prout patet, &c.

Per Scruect. Fin. Ter^r Sct. Trin. anno 39. El. Regine.

Laurencius Broome de parva Baddon in Com. pred. husband. Essex.
traditur in Ball^r ad subiiciend. &c. ad mandat. privat. Consil. Do-
mine Regine super habeas corpus.

Versus Rando. Mayall de Hatfield Beverell in Com^r pred^r gener. vsq; octabis
Versus Henrico Odall de eadem Gent. Mich.

Versus Will. Eckasden de Westmst Bricklayer.

Versus Rica. Morgan de Westmst Labourer.

Uterq; sub pena 40 l. et princeps sub pena 100 morcarum.

Pro suspitione proditiōis cum Johanne Smith mil.

De Ter^r Sct^r Michaelis anno 4 El. & per cont:

Rot. ejusdem Rot. 37.

Tho. Wenden per Hugonem Parlour gen^r custod. prisona Do-
mine Regine de le Gatehouse virtute brevis Domine Regine de
Habeas corpus ad Subiiciend. &c. ei inde direct^r et coram Domina
Regina apud Westmst duct. cum causa vizt. ad 18 die Junii Anno
Regini Domine El. nunc Regine Anglie 38 corpus &c. infra no-
minat. Tho. Wenden extra cur^r ejusdem Domine Regine coram
ipsa Domina Regina privati Consilii Dom. Regis civitatis tenor
sequitur in hec verba scilicet. These are to wil & require you to
receive

*M. Seldens
Argument.*

receive into your charge and custody, the person of *John Bracket Knight*, and him to retaine in safe keeping under your charge, untill you shall have further order for his enlargement, whose comitment being for some special matter concerning the service of our Sovereigne Lord the King, you may not faile to regard this Warrant accordingly. From the Kings Pallace at White-Hall the last of March 1605. *Enq. fuit causa detentionis pred. Johannis in prisoa pred. qui committitur Marr. &c. & postea traditur in Ball' prout patet, &c.*

*13. 14. Rayners
Case eite devunt
fo. 35.*

Ter' Mic. Anno 12. Jac. Regis Rot. 119.

Milo Reyner per Aquilam Wykes Custod. prisoae de le Gate-house, virtute brevis Dom. Regis de Habeas corpus ad Subiiciend. &c. coram Domino Rege duct. cum causa vizt. quod ante adventu brevis pred. scilicet. 10. Julij Anno Dom. 1613. pred. Milo Reyner commissus fuit prisoa pred' & huc usq. detent. virtute Warr' cujusdem facti, & directi. per Georgium Archiepiscopum Cant. Henr. Com. Northampton, Tho. Com. Saffolke. Willielm. Dom. Knolles, Edwardum dom. Wooton, & Edwardum dom. Stanhope cuius Warranti tenor sequitur in hec verba. To Aquila Wykes, Keeper of the Gate-house in Westminster, or his Deputie, whereas it is thought meet that Miles Reyner and Richard Beckwith, be restrained of their libertie, and committed to the prison of the Gate-house. These shall bee to will and require you, to receive the persons of Rayner & Beckwith into your charge and keeping, untill you shall have further order from us in that behalfe, for which this shall be your sufficient warrant, Dated at White-Hall the 10. of July 1613. Et hac est causa detentionis sue in prisoa pred. Qui committitur Marr' &c. Et postea isto eodem ter' traditur in Ball' prout patet, &c.

*3. H. 7. Everard's
Case cito
devunt, fo. 35.*

Ter. Hill 3. H. 7. & per cont' ejusdem, Rot. 18.

Ricms Everard imper. de Colchester in Com. Essex clericus, & Robertus Wight nuper de Norwico Smith per Robertum Wyloughbie mil' Dom. de Brooke Seneschall' Hospicii Dom. Regis, & Iohannem Turberville mil. Marr. Hospicii pred. virtute bre. de Habeas Corpus ad Sectam ipsius Regis pro quibusdam prodicionibus, & felon' unde indicto Com. Essex indictat sunt eis inde Directi

Direct. Coram Domino Rege duct. cum causa, vizt. quod idem Mr. Seldens Ricardus Everard & Robertus Wight Commiss. fuer. custod. Presidentes. Marr. Marr. pred. per mandat. Dom. Regis. Qui committitur Marr. &c.

Ter. Hill 8. H. 7. et per cont. ejusdem, Rot. 13.

Roger Cherrie nuper de nova Windsor in Com. pred. Teoman alias Berck ff. dict. Rog. rns Stearries nuper de eadem in eodem Com. Teom. per 10-8. H. 7. Cherries han. Baker Majorem ville Dom. Regis de nova Windsor in Com. case cite devant pred. virtute brevis Dom. Regis de Habeas Corpus ad Sect. ipsius 10. 43. Regis pro quibusdam felonis & transgr. unde in Com. Midd. in dictatus est sibi inde direct. coram Domino Rege duct. cum causa, vizt. quod idem Roger. commissus fuit Gaol. Dom. Regis infra villa. pred. per mandat. Dom. Regis. Qui committitur Marr. &c.

Ter. Hillar 9. H. 7 & per Cont. ejusdem Rot. 14.

Christopherus Burton nuper de Rochester in Com. Cancey Hack- 9. H. 7. Burtons neyman per Robertum Willoughbie Dom. Brooke mil. Seneschall Case cite devant, fo. 44. Hospitij Dom. Regis, & Iohannem Digbie mil. Marr. cur. Mar. Surr. ff. Hospitij pred. per mandatum Dom. Regis. Et hac est causa & non alia. Qui committitur Marr. &c.

Ter. Pas Anno 19. H. 7. & per Cont. ejusdem Rot. 23.

Georgius Urneswicke de London Mereer per Oliverum Wood 9. H. 7. Urms- wicks Case cite locum tenen. prisiona Dom. Regis de le Fleet virtute brevis Dom. devant. fo. 44. Regis de conservand. diem, &c. et inde direct. coram rege duct. cum causa vizt. quod idem Georgius 13. May Anno 19. Regis commissus fuit prisiona del Fleet per mandatum ipsius Dom. Regis salvo custodiend. Sub pena 40. l. qui committitur Marr. &c.

Ter. Trin. Anno 8. H. 8 per cont. ejusdem Rot. 23.

Edwardus Page nuper de London Gent. per Georgium Com. Sa- 8. H. 8. Pages lopia Seneschall. Hospitij Dom. Regis, & Henricum Shamburne, case cite devant, Marr. cur. Mar. Hospitij pred. virtute brevis Dom. Regis de Ha- fo. 45. beas corpus ad Sect. ipsius Regis ad conservand. diem, &c. eis inde direct. & coram Rege duct. cum causa, vizt. quod idem Edwardus Capus & detentus in prisiona Regis Marr. pred. per mandatum Dom. Regis ibidem salvo Custodiend. &c. Qui committitur Marr. Hospitij Dom. Regis.

Mr. Seldens
Presidentis,
& Jac. Casars
case cite devant
fo. 46.

Ter. Mich. Anno 8. Jac. Et per. cont. ejusdem Rot. 99.

Tho. Casar per Tho. Vaviseour mil^l Marr. Hospitij Dom. Regis
& Marr. Marr. ejusdem Hospitij Dom. Regis, virtute brevis
Domini Regis de Habeas corpus ad subijciend. &c. ei inde direct.
& coram Rege apud Westminst. duct. cum causa, viz. quod ante
adventum brevis pred. scil. 18. July Anno Regni dicti Dom. Re-
gis nunc Anglia, &c. 7. Tho. Casar in brevi pred. nominat. Captus
fuit apud White-Hall in Com^o Middl. per speciale mandatum
Dom. Regis ac per eundem Regem ad tunc & ibidem Commiss. fuit
prison. Marr. ibidem salvo Custodiend. quousq. &c. Et ea fuit
causa captionis & detentionis ejusdem Tho. Casar Qui committi-
tur prisona Marr. pred.

Ter. Sancti Mich. 8. Jac. Regis.

Nisi pred. Seneschall & Marr. Hospitij Dom. Regis sufficien-
ter resurⁿ bre. de Habeas Corpus Tho. Casar die Mercur. per
quinden. Sancti Martini defendens exonerabitur.

Ter Hill. 12. Jac. Rot. 153.

Marr^o Hospitij
Regis 12. Jac. E-
mersons case cite
devant. fo. 46.

Iacobus Demaistres, Edwardus Emerson, Georgius Brookeshall
& W. Steophens per Tho. Vaviseour mil^l Marr. Marr. Hospitij Regis
virtute bre. Dom. Regis de Habeas corpus ad subijciend. &c. ei in-
de direct. coram domino Rege apud Westminst. duct. cum causa,
viz. quod ante adventum brevis pred. scilicet. 22. Januarii. Anno Re-
gis Iacobi Anglia, &c. 12. & Scot. 48. pred. Iacobus Demaistres,
Edwardus Emerson, Gregorius Brookeshall, & W. Steophens in
brevis. huic Schedul^o annex. nominat. Commiss. fuer^o Gaol^o Marr.
Hospitij Dom. Regis pro causis ipsius Regem & servic^o suum tan-
gen. & concernan. Et hac est causa Captivus pred. Iacobi, Ed-
wardi, Georgij & Willielmi, & postea immediate remittitur prafat.
Marr. Hospitij pred.

Ter Hill. 12. Jac. Regis.

Prison de le
Fleet Sir Samu-
el Saltonstalls
case cite devant
fo. 49.

Samuel Saltonstall miles per Johannem Wilkinson Ar. guard.
de le Fleet virtute brevis Dom. Regis de Habeas Corpus ad sub-
ijciend. &c. ei inde direct. & coram Domino Rege apud West-
minst. duct. cum causa viz. quod pred. Samuel commiss. fuit pri-
sona pred. 11. Martij 1608. per Warrant. a Dominis de privato
consilio Dom. Regis & quod detentus fuit etiam idem Samuel in
prisona pred. virtute ejusdem ordinis in cur. Cane^o Dom. Regis
fact. cujus ordinis tenor patet per Rot. Record. istius Terminii ad
quem

quem diem pred. Samuel remittitur priso^a pred. Et secundus dies
prox. ser' datus est guardian. priso^a pred. ad emendand. re-
turn. suum sufficien. super pred. bro. de Habeas Corpus, Et quod
tunc intulerit hic in cur. corpus pred. Samuel Saltonstall mil'. Ad
quam quidem diem prefat. Guardian. priso^a pred. super pred.
bro. de Habeas Corpus return. quod pred. Samuel commissus fuit pri-
sona pred. 11. die Martii 1608. per Warrant. a Dom. de privat'
Concil. dicti Dom. Regis apud Whitehal tunc Seden. & quod postea
11. die Febr. 1610. commiss. fuit extra cur. Canc. Dom. Regis apud
Westminst. pro contemptu suo eidem cur. illat. Et quod desent. fuit
etiam idem Samuel in priso^a pred. per mandas. Dom. Cancellar'
Anglia super quo pred. Samuel iterum remittitur priso^a
pred. & ulterius dies dat' est prefat. Gardian. ad emendand.
return. suum super Habeas corpus ver. descom. prout stare voluit
usq. diem Iovis prox' Mens. Pasch. Et tunc ad Habend. Corpus,
&c. Ad quam diem prefat. guardian. intulit corpus hic in cur.
& return' super Habeas corpus quod pred. Samuel Commiss. fuit
priso^a pred. 11. die Martii 1608. virtute cuiusdam Warranti a
'Dominis de privato Concil' Dom. Regis tunc seden. apud White-
Hall, Et quod etiam idem Sam. Commiss. fuit priso^a 11. Febr.
Anno Regis Jac. 8. per cur. Canc. Dom. Regis apud Westminst. tunc
existen. pro quadam contempt. per eundem Samuel eidem cur. illat.
& perpetrat. proinde salvo custodiend. qui remittitur priso^a pred.

Ter. Tr. Anno 13. Jac. & per cont. ejusdem Rot. 17.

Samuel Saltonstall miles per Iohannem Wilkinson Guardian. Samuel Saltonstall
priso^a de le Fleet virtute brevis Dom. Regis de Habeas Corpus
ad Subiiciend. et recipiend. &c. et inde direct. & corā Domino Rega
apud Westminst. audt. cū causa vitz. quod pred. Samuel Saltonstall
commissus fuit priso^a pred. 12. die Martii Anno Regis Iacob.
Anglia, &c. sexto virtute cuiusdam Warrant. a dominis de privat.
Consilio Dom. Regis tunc seden. apud White-Hall commissus fuit
etiam idem Samuel Saltonstall miles priso^a pred. 12. die Febr. An-
no 1610. & Anno Reg. Iac. Anglia, &c. 8. per considerat. cur.
Cancell. dicti Dom. Regis apud Westminst. pro contempt. eidem
cur. ad tunc per pred. Samuel illat. ibidem proinde Salvo custodi-
end. Et hac sunt causa captionis & detentionis pred. Sam. Salton-
stall mil. in priso^a pred. cuius tamen corpus ad diem & locum
infra content. parat. habeo prout mihi precipiunt.

13. Ia. Sir Sa-
muel Saltonstall
case cit. devant,
fo. 49.

Finis: les Presidents.

Iovis 3. Apr. 4. Caroli Regis.

Sir Edward
Cokes Ar-
gument.

1. **R**esolved upon the question, that no Free-man ought to be deteyned or kept in prison, or otherwise restrained by the command of the King, or the Privie Counsell, or any other, unlesse some cause of the commitment deteyner or restraint bee expressed, for which by Law he ought to be committed, deteyned or restrained.

2. That the Writ of Habeas Corpus may not bee denied, but ought to be granted to every man that is committed or deteyned in prison, or otherwise restrained, though it be by the command of the King, the Privie Counsell or any other, hee praying the same.

That if a Free-man be committed or deteyned in prison or otherwise restrained by the Command of the King, the Privie Counsell, or any other, no cause of such commitment, deteyner or restraint being expressed, for which by Law he ought to be committed, deteyned or restrained, and the same be returned upon a Habeas Corpus granted for the said party, then he ought to be delivered or bayled. All these without one negative, that these Acts of Parliament, and these Iudiciall presidents in affirmance thereof (recited by my Colleagues) are but declarations of the fundamentall lawes of this Kingdome I shall prove by manifest and legall reasons which are the grounds and mothers of all lawes.

The first generall reason.

1. The first generall reason is drawne *are ipsa*, from imprisonment, *ex visceribus causa*, be it those or other imprisonments, which is divided into three parts.

¶ 1. First, no man can be imprisoned at the will and pleasure of any but he that is bond, and a villaine, for that imprisonment at will is *tailes luy hant*, & *base*, are *propria quarto modo* to villaines.

2. But if Free-men of England might be imprisoned at the will and pleasure of the King by his commandment, then were they in worse case then bond-men & villaines. for the lord of a villaine cannot command another to imprison his villaine without
cause

cause, as of disobedience, or refusing to serve, as it is agreed in Sir Edward
our Bookes. Cookes Ar-
gument.

3 Imprisonment is accounted in law a civil death, *perdit do-
mum, familiam, vicinos, patriam*, his house, his family, his wife, 3
his children, his neighbours, his Country, and to live among
wretched wicked men.

If a man be threatned to be killed, he may avoid a seoffment 39 H. 6. fo. 90.
of lands, gift of goods, &c. So it is, if he be threatned to be im- & 41. Ed. 3. 9.
prisoned, he shall doe the like, for that is a civill death.

The second generall reason.

The second generall reason is a *Minore ad majus*; *paua corpo-
ralis est majus qualibet pecuniaria*, but the King himselte can- *Brañon 105.
fo. 15.*
not impose a fine upon any man, but it must be done juditially
by his Judges, *per Iusticiar' in Cur' non per Regem in Camera*, 2 R. 3. 11.
and so it hath bene resolved by all the Judges of England.

The third generall reason.

The third generall reason is drawne from the number and
diversity of remedies, which the law giveth against imprison-
ment, *vizt. brevia de Homine replegiando de odio & Atia de
habeas corpus & bre. de manucapiene*.

The two former of these are antiquated, but the writ *de odio
& Atia* is revived, for that was given by the Stat. of *Magna
Car' cap. 26.* and therefore though it were repealed by the
Stat. of 28. Ed. 3. ca. 9. yet it is revived by the Stat. of 43. Ed. 3.
cap. 1. by which it is provided, that all Statutes made against
Magna Charta are void, now the law would never have
given so many remedies, if the Freemen of England might
have bene imprisoned at Free will and pleasure.

The fourth generall reason.

The fourth generall reason is drawne from the extent & uni-
versality of the pretended power to imprison, or it should not
extend onely to the Commons of the Realme and their poste-
rity but to the Nobility and their Honourable Progenies, to
the Bishops and Clergie of the Realme and their Successours;
to all persons of what condition, or sex, or age so ever: to all
Judges, Officers, &c. whose attendance are necessary without
exception of any person.

The fifth generall reason.

Edward
pokes Ar-
gument,

The fifth generall reason is drawne from the indefinitenesse of time, the pretended power being limited to no time, it may be perpetuall during life.

The sixth generall reason.

The sixth generall reason is drawne a *dedecore* from the losse and dishonour of the English nation, in two respects. 1. For their valour and power so famous through the whole world. 2. For their industry; for who will endeavour to imploy himsele in any profession, either of Warre, liberall Science, or Merchandize, if he be but tenant at will of his liberty, and no tenant at will, will support or improve any thing, because he hath no certaine estate; and thus it should be both *dedecus* and *damnum* to the English nation, and it should be no honour to the King to be King of a slaves.

The seventh generall reason.

The seventh generall reason is drawne *ab utili et inutili*, for that appeareth by the Stat. of 36 *Ed.* 3. that the execution of the Statute of *Magna Charta* 5. *Ed.* 3. 25. *Ed.* 3. & 28. *Ed.* 3. are adjudged in Parliament to be for the common profit of the King, and of his people, and therefore the pretended power being against the profit of the King, and of his people, can be no part of his prerogative.

The eighth generall reason.

The eighth generall reason is drawne a *risu*, for it is safe for the King to expresse the Cause of the Commitment, and dangerous for him to omit it, for if any be committed without expressing of the Cause, though hee escape, albeit the truth be, it were for treason or felony, yet the escape is neither felony nor treason; but if the cause be expressed to be for suspicion of treason or felony, then if he escape, albeit he be innocent, it is treason or felony.

The last generall reason.

The last generall reason is drawne from authorities.

16. *H. 6. Means de fait* 182. by the whole Court, the King in his presence cannot command one to be arrested, but an action of false imprisonment lies against him that arresteth.

22. *H. 7. 4. Newton.* 1 *H. 7. 4.* The opinion of *Markham* chiefe Justice to *Ed. 4.* And the reason because the party hath

no remedy. *Fortescue cap. 8. Proprio ore nullum regum usum* Sir Edward
est, &c. to commit any man. *Cookes Ar-*

4. *El. Plo. Com. 236.* The Common Law hath so admeasured the Kings Prerogative, as he cannot prejudice any man in his inheritance, and the greatest inheritance a man hath, is the liberty of his person, for all others are accessary to it. *Cicero. Major hereditas venit unicuique nostrum a legibus quam a parentibus, 25. Ed. 1. cap. 2.* All judgements given against *Magna Charta* are void;

Upon conference with the Lords, these objections were made by the Kings Attorney.

The first objection.

That the resolutions of the House of Commons were incompatible with a Monarch that must governe by rule of State.

Whereunto it was answered, *Quod nihil tam proprium est imperii quam legibus vivere.* And againe, *Attribuat Rex legi quod lex attribuat ei vizt. dominationem & imperium quia sine lege non potest esse Rex.* It can be no prejudice to the King by reason of matter of State: for if it be for suspicion of treason, misprision of treason, or felony, it may be by generall words expressed, vizt. *pro suspitione proditoris, &c.* If it be for any contempt, or any other thing, the particular cause must be shewed.

The second objection.

To blinde those that are committed, one cause must be pretended, and another intended, especially when it toucheth matter of State.

Whereunto it was answered, that all dissimulation, especially in a cause of Justice, was to be avoided, and soundnesse of truth to take place. And therefore *David* that was both a King and a Prophet, prayed unto Almighty God against dissimulation, in these words, *Lord send me a sound heart in thy Statutes, that I be not ashamed: where found in the originall signifieth upright without dissimulation, and shame followeth dissimulation when the truth is knowne.*

The third objection.

If a Rebelle be attainted in Ireland, and his children for safety,

it Edward
doke's Ar-
ument.
Rhs.

safety, and matter of State be kept in the Tower; what shall be returned upon the *habeas corpus*?

Whereunto it was answered, that their imprisonment might be justified, if they could not find good sureties for their good behaviour. 2. It was charity to finde them meat, drink, and cloath, that by the Attainder of their Father had nothing,

The fourth objection.

Though his Majestie expresseth no cause, yet it must be intended there was a just cause.

Bracton } Answered } *De non apparentibus & non existentibus*
Fleta } } *eadem ratio.*

The fifth objection.

The King in stead of gold or silver, may make money currant of any base mettall. 2. He may make warres at his pleasure. 3. Hee may pardon whom he will. 4. Hee may make Denizens as many as he will, and these were said to be greater prerogatives then these in question.

Answer to the first. It was denied that the King might make money Currant of base money, but it ought to be of gold or silver. 2. It was answered admitting that the King might do it, his losse and charge was more then of his Subjects, both in the Case of money, and in the Case of warre; the pardon was private, out of grace, and no man had danger or losse by it; and so the making of Denizens the King was onely the looser, *viz.* where hee had double Customes to have single. 3. It was a *non sequitur*, the King may doe these things, *ergo* hee may imprison at will.

Your Lordships are now advised by those that cannot be daunted for feare, nor misled by affected reward, or hope of preferment, that is of the dead.

By ancient and many Acts of Parliament in the point besides *Magna Charta*, which hath beene 30. times confirmed, and commanded to be put in execution, whereto the Kings of England have 30. times given their royall assent.

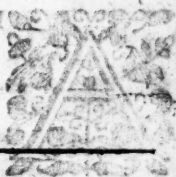
Judiciall Presidents of grave and reverend Judges in *terminis terminantibus*, that long since are departed this world.

And lastly, *per vivida rationes*, manifest and apparent reasons.

Wee

Wee of the House of Commons have, upon great Studie and serious consideration, made a great *manifesto* unanimously *nullo contradicente*, concerning this great liberty of the Subject, and have vindicated and recovered the body of this fundamentall liberty, both of your Lordships, and of our selves, from shadowes, which sometimes of the day are long, sometimes short, and sometimes long againe, And therefore no Judges are to be led by them: your Lordships are involved in the same danger, and therefore *ex congruo & condigno*, wee desired a conference, to the end your Lordships may make the like declaration, as we have done, *Commune periculum requirerh commune auxilium*, and thereupon take such further course as may secure both your Lordships, and us, and all your and our posterities in enjoying our ancient undoubted and fundamentall libertics.

FINIS.



K

The



The substance of the obiections made by M. Attorney Generall, before a Committee of both Houses, to the Argument that was made by the House of Commons, at the first conference with the Lords, out of Presidents of Record, and resolutions of the Iudges in former times, touching the liberty of the person of every Freeman, and the answers and replies then presently made by the House of Commons to those obiections.

*M. Attor.
neyes objections.*



After the first conference which was desired by the Lords, and had by a Committee of both Houses in the painted Chamber, touching the reasons, lawes, acts of Parliament, and Presidents concerning the liberty of the person of every Freeman, M. Attorney Generall being heard before a Committee of both Houses, as it was assented by the House of Commons that hee might be, before they went up to the conference, after some preamble made, wherein hee declared the answering of all reasons of Law, and Acts of Parliament, came onely to the Presidents used in the Arguments before delivered, and so endeavoured to weaken the strength of them that had bin brought on the behalfe of the Subject, to shew that some were directly contrary to the Law comprehended in the resolutions of the House of Commons touching the bayling of prisoners returned upon the Writ of *Habeas Corpus* to be committed by the speciall command of the King, or of the Counsell, without any cause shewed for which they ought by Law to be committed.

And

And the course that was taken (which is pleased the Committee of both Houses to allow of) was that M. Attorney should make his objections to every particular President, and that the Gent. appointed and trusted by the House of Commons by severall replies should satisfie the Lords touching the severall objections made by him against or upon every particular, as the order of the Presidents should lead them. He began with the first 12 Presidents that were used by the House of Commons, at the conference desired by them, to prove that prisoners returned to stand so committed were delivered by bayle by the Court of Kings Bench.

The first was, that of *Bildeston's Case* in 18 Ed. 3. Rot. 33. To this he objected, 1. That in the returne of him into the Court it did not appeare that this *Bildeston* was committed by the Kings Command. And secondly, that in the Record it did appeare also that he had beene committed for suspicion of counterfeiting of the great Seal, and so by consequence was bayleable in the Law, in regard there appeared a cause why hee was committed, in which case it was granted by him (as indeed it is plaine and agreed of all hands) that the prisoner is bayleable, though committed by the Command of the King. And he said that this part of Record by which it appeared hee had beene committed for this suspicion of treason was not observed to the Lords in their Argument before used. And he shewed also to the Lords, that there were three severall kinds of Records, by which the full truth of every award or bayling upon a *habeas corpus* is knowne. First, by the remembrance roll wherein the award is given. Secondly, the file of the Writ, and the returne. Thirdly, The Scrut Roll or Scrut linn', wherein the Bayle is entred, and that onely the remembrance roll of this case was to be found, and that if the other two of it were extant, he doubted not but that it would appeare also, that upon the returne it selfe the cause of the commitment had beene expressed; and so he concluded that this proved not for the resolution of the House of Commons touching the matter of Baile, where a prisoner was committed by the Kings command without cause shewed.

Objectional
Bildeston's Case
cite devant. so.
35. & 55.

To these objections the reply was first, that it was plaine, R^{is} al dic obj.
that

that *Bildeston* was committed by the Kings expresse command, for so are the very words of the Writ to the Constable of the Tower, *quod eum teneri & custodiri facias, &c.* then which nothing can more fully expresse a commitment by the Kings command. Secondly, how ever it be true, that in the latter part of the Record it doe appeare, that *Bildeston* had beene committed for a suspicion of treason, Yet if the time of the proceeding expressed in the Record were observed, it would be plaine, that the objection was of no force: for this one ground both of this one case, and all the rest, is infallible, and never to be doubted of in the Law. That the Justices of every Court adjudge of the force and strength of a returne out of the body of it selfe onely, and according as therein appeares to them. Now in Easter Terme 18 Ed. 3. he was returned and brought before them onely as committed by the Writ, wherein No cause is expressed, and the Lieutenant of the Constable of the Tower that brought him into the Court, said, that he had no other warrant to detaine him *nisi bre. predicta*. wherein there was no mention of any Cause, And the Court thereupon adjudged, that *bre. predicta*. or that speciall command was not sufficient cause to detaine him in prison, and thereupon he is by judgement of the Court in Easter Terme let to mainprife, but that part of the Record, wherein it appeares, that he had indeed beene committed for suspicion of treason, is of Trinity Terme following, when the King, after letting him to mainprife, because no man, prosecuted him. And at that time it appeares, but not before, he had been in for suspicion of treason, so that he was returned to be committed by the Kings speciall command onely, without any cause shewed in Easter Terme, and then by judgement of the Court let to mainprife, which to this purpose is but the same with bayle, though otherwise it differ. And in the Terme following, upon another occasion, the Court knew that he was committed for suspicion of treason, which hath no relation at all to the letting him to mainprife, nor to the judgement of the Court then given, when they did not, nor could not possibly know any cause for which the King had committed him, and it was said in the behalfe of the House of Commons, that they had not

not indeed in their Argument expressly used the latter part of the Record of *Bildestons* Case, because it being only of Trinitie terme following, it could not concerne the reasons of an award given by the court in Easter terme next before, yet notwithstanding that they had most faithfully at the time of their Argument delivered unto the Lords (as indeed they had) a perfect Copie at large of the whole record of this Case, as they had also done of all other Presidents whatsoever cited by them, insomuch as intruth there was not one president of Record of either side, the Copie whereof they had not delivered in likewise, nor did Master Attorney mention any one besides those that were so delivered in by them. And as touching the three kinds of Records, the remembrance Rolle, the returne and the file of the Writ, and the Scruet, it was answered by the Gent. imployed by the house of Commons, that it was true the Scruet and returne of this case of *Bildestons* was not to be found, but that did not lessen the weight of the president, because alwayes in the award or Judgement drawne up in the remembrance Rolle, the cause whatsoever it be, when any, is shewed, appears clearly by the constant Entrees of the Court of Kings Bench; So as if any cause had appeared unto the Court it must have appeared plainly in that part of the Roll which belongs to Easter terme wherein the Judgement was given, but the returne of the commitment by the Kings command without cause shewed, and the Judgement of the Court, that the prisoner was to be let to mainprife appears therein only. And so, notwithstanding any objection made by Master Attorney, the Cause was maintained to be cleare prooffe among many others touching that resolution of the House of Commons.

To the second of those 12. which is *Parkers* Case in 22.H.8 rot. 37. his Objections were two, first, that this is true that he was returned that he was committed *per mandatum Dom. Regis*, but that it appeared that this command was certified to the Sherifes of London by one *Robert Pecke*, and that in regard the command came no otherwise, the returne was held insufficient, and therefore he was bayled. Secondly, that it appears also in the record, that he was committed *pro suspicionem felonie ac per mandatum Dom. Regis*; So that in regard the ex-

Objections Hors
de Parkers case
22.H 8 cite an-
te, fo 35 et. ss.

pression of the cause of his commitment suspicion of felony precedes the command of the King, therefore it must be intended, that the Court tooke the cause why the King committed him to be of lesse moment then felony, and therefore bayled him; For he objected that even the house of Commons themselves in some Arguments used by them touching the interpretation of the Statute of *Westm. 1. cap. 15.* about this point had affirmed, that in enumeration of particulars those of greatest nature were first mentioned, and that it was supposed that such as followed were of lesse nature or moment.

R^{as} al dit objection.

But the reply was to the first objection, that the addition of certifying of the Kings command by *Robert Pecke* altered not the case, first, because the Sherifes in their returnes tooke notice of the command, as what they were assured of, and then however it came to them, it was of equall force as if it had beene mentioned without reference to *Pecke*: Secondly, that as divers Patents passe the great Scale by Writ of privie Scale, and are subscribed *per bre. de privato Sigillo*, so divers *per ipsum Regem* & are so subscribed, and oftentimes in the Rolles of former times to the words *per ipsum Regem* are added *Nuncios A. B.* So that the Kings Command generall, and the Kings command related and certified by such a man, is to this purpose of like nature. Thirdly, in the late great Case of *Habeas Corpus*, where the returne of the commitment was *per speciale mandatum Dom. Regis mihi significat. per Dominos de privato consilio*, and the Court of the Kings Bench did agree that it was the same, and of the like force, as if *mihi significat. &c.* had not followed, and that these words were void, according whereunto here also *per mandat. Dom. Regis nunciat. per Robertum Pecke* had bin wholly omitted and void likewise; in truth in that late Case this case of *Parker* was cited both at the Bar, and at the Bench, and at the Bench it was interpreted by the Judges no otherwise then if it had beene only *per mandatum Dom. Regis* in this place of it. But the objection there was made of another kind, as was delivered in the first Argument made out of Presidents in behalfe of the house of Commons. Then for the second objection touching the course of enumeration of the causes in the returne, it was said, that however in some acts

of Parliament, and else-where in the solemne expression used in the Law, things of greater nature precede, and the lesse follow. Yet in this case the contrary was most plaine, for in the return there appaeres, that there were three causes of deteyning the prisoner, surety of the peace, suspition of felonie, and the Kings command, and suretie of the peace is first mentioned, which is plainly lesse then felonie, therefore it is as plaine, that (if any force of Argument be here to be taken from this enumeration) the contrary to that which Master Attorney inferred is to be concluded, that is, that as felonie is a greater cause then Suretie of the Peace, so the matter whereupon the Kings command was grounded, was greater then the felonie. But in truth this kind of Argument holds neither way here. And what so ever the cause were why the King committed him, it was impossible for the Court to know it, And might also have been of very high moment in matter of State, and yet of farre lesse nature then felonie, all which shewes that this President hath its full force also, according as it was first used in Argument by the house of Commons.

To the third of these, which is *Bincks Case* in 35. H. 8. Rot. 35. the Objection was, that there was cause expressed, *pro suspitione felonie*, and though *pro alijs causis illos movensibus* were added in the returne, yet because in the course of enumeration the generall name of *alia* coming after particulars includes things of lesse nature then the particular doth, therefore in the Case suspition of felonie being the first, the other causes generally mentioned must be intended of lesse nature for which the prisoner was bayleable for the greater which was suspition of felonie.

35. H. 8. Binck
case citat ante
36. & 36 ob-
jections hors de
ceo.

Hereunto it was replied that the Argument of enumeration in these cases is of no moment, and is next before shewed, and that although it were of any moment, yet the *alia causa*, though lesse then felonie, might be of very great consequence in matter of State, which is pretended usually upon generall returns of command without cause shewed. And it is most plaine that the Court could not possibly know the reasons why the prisoner here was committed, and yet they bayled him without looking further after any unknowne thing under that
tytle

Rñs al dit ob-
jection.

type of matter of State, which might as well have been in this Case, as in any other whatsoever.

To the fourth of these, which is *Overtons Case en Pas. 2. & 3. P. et Mar. rot. 58.* and to the fifth, which is *Newports Case, Pas. 4. & 5. P. & Mar. rot. 45.* onely these observations were said over againe by Master Attorney, which were moved in the Argument made out of the Presidents in the behalfe of the house of Commons at the first conference, and in the same Argument were fully and cleerely satisfied, as they were now againe in like manner.

To the sixth, which is *Lawrences Case*, in *9. El. rot. 35.* and to the seventh, which is *Constables Case*, *Pas. 9. El. Rot. 68.* the same objections were likewise said over againe by Master Attorney that are moved and clearly and fully answered in the Argument made at the last Conference out of Presidents in the behalfe of the house of Commons. The force of the Objection being only that it appeared in the margin of the Roll, that the word Pardon was written, but it is plaine that the word there hath no reference at all to the reason why they are bayled, nor could have reference to the cause, why they were committed, is utterly unknowne, and was not shewed.

To the eighth, which is *Brownings Case*, in *Pas. 20. El. Rot. 72.* it was said by Master Attorney, that he was bayled by a Letter from the Lords of the Counsell directed to the Judges of the Court, but being asked for that Letter, or any testimony of it, he could produce none at all, but said he thought the testimony of it was burnt amongst many other things of the Counsell table at the burning of the Banquetting house.

To the ninth, being *Harecourts Case*. *Pas. 40. El. Rot. 620.* the selfe-same objection was made by him, but no warrant was shewed to maintaine his objection.

To the tenth, which is *Catesbies Case in vacatione Hill. 43. El.* he said that it was by direction of a Privie Scale from the Queene; and to that purpose he shewed the Privie Scale of *43. El.* which is at Charge among the transcript of the Records concerning bayles taken in Cases when the King or the Lords of the Counsell assented.

But it was replied, that the Privie Scale was made only for some

3. P. & M.
Overtons case,

4. et 5. P. & M.
Newports

case cite ante,

36. et 37. Et
objections la

made le Record
le ceux, vide an-

te fo. 37. et 38.

El. Lawrence's
case, et eodem

Anna Constables
case cite devant

fo. 38. et 56.

20. El. Brown-

ings case cite

devant fo. 38.

et 56.

40. El. Hare-

courts case cite

devant, fo. 39.

43. El. cite de-

vant, fo. 39.

Catesbies case.

Object. a coo.

Ris a coo.

some particular Gentlemen mentioned in it and none other, as indeed appears in it. And then he said, that it was likely that *Catesby* here had a privie Seale in this behalfe, because those other had so, which was all the force of his objection.

To the 11 which is *Beckwiths Case*, in *Hill. 12. Jac. Rot. 183.* ^{12. Jac. Beckwiths case cite devent. fo. 39. & 58.} He said the Lords of the Counsell sent a letter to the Court of Kings Bench to bayle him, and indeed hee produced a letter, which could not by any meanes be found when the Arguments were made at the first conference. And this Letter, and a Copie of an obscure report made by a young Student, that was brought to another purpose (as is hereafter shewed) were the onely things written of any kinde that M. Attorney produced, besides the particular shewed by the House of Commons at the first conference? ^{Objection a ceo.}

To this it was replied, that the letter was of no moment, being onely a direction to the chiefe Justice, and no matter of record, nor any way concerning the rest of the Judges. And besides, the prisoner was bayleable by the Law, or not bayleable; if bayleable by the Law, then was he to be bayled without any such Letter; if not bayleable by the Law, then p'ainly the Judges could not have bayled him upon the Letter without breach of their oathes, which is, that they are to doe Justice according to the Law, without having respect to any command whatsoever; so that the Letter in this Case, or the like in any other case, is for point of Law to no purpose, nor hath any weight at all by way of objection, against what the record and judgement of the Court shewes us. ^{Ris al objections.}

The twelfth and last of these which is *Sir Tho. Mounsons Case*, in *14. Jac. Rot. 147.* the same objection onely was said over by him, which was moved and clearly answered in the Argument at the first conference, and that one ground which is infallible, that the judgement upon a returne is to be made onely out of what appears in the body of the returne it selfe, was againe insisted upon in this case, as it was also in most of the rest. And indeed that alone (which is more cleare Law) fully satisfies almost all kinde of objections that have beene made to any of these Presidents, which thus rightly understood, are many ample testimonies of the judgement of the Court of Kings

Bench touching this great point, in the severall ages & raignes of the severall Princes under which they fall.

After his objections to these twelve, and the replies and satisfaction given to these objections, hee came next to those wherein the assent of the King or privie Counsell appeares to have beene upon the enlargement, but hee made not to any of these any other kind of objection whatsoever, then such as are moved and clearly answered (as they were now againe) in the Argument made at the first conference. And for as much as it concernes Letters of Assent or direction, the same was here said againe by way of reply to him, as is before said touching the Letter in *Beckworths Case*, *hoc supra*.

After these were disputed, hee came to urge the eight Presidents which seemed to make for the other side, against the resolution of the house of Comons, which eight were used, and copies of them also given unto the Lords at the first conference.

Of these eight, the first foure were urged by him, as being of one kinde, the difference of them being onely said the same, onely in the names of prisons, and of persons, they were but the selfe same.

The force of these foure being objected thus, that *Richard Everard* for the purpose in the first of them, which is 5. H. 7. Rot. 18. *Roger Cherry* in the second of them, which is 8. H. 7. Rot. 12. *Christopher Burton* in the third, which is 9. H. 7. Rot. 14. and *George Wmsfemick* in the fourth of them, which is 19. H. 7. Rot. 13. were returned into the Kings Bench by severall Writs of *Habeas corpus*, to have been committed, and detained in the prisons whence they came, *per mandatum Dom. Regis*, and that upon the returne they were committed to the Marshalsea of the Kings Bench, and that howsoever it had beene objected against those Presidents, that this kind of commitment was by the course of that Court alwayes done before the Bayling of the prisoner, yet that it did not appeare that they were bayled.

The reply to these objections was, that the constant course of the Court of Kings Bench was, whosoever came in upon a *hab. corp.* or otherwise upon any Writ into that Court, cannot be bayled, until he be first committed to the Mar. of that Court, & that thence it was that all those 4. were committed to the

Marshall,

Vide tous ceux
cite devant so.
43 44. & 61.
63 objections
boys de eux.

Rés al obje-
ctions hors des
dits presidents.

Marshal, as appears by the entry, *Marr'. &c.* which is the usual entry in such a case, and that the Clerks of that Court acknowledge this course & entry to be most constant so that all the inference that can be made out of these 4 is, but that 4 prisoners being brought from foure severall prisons by *hab. corp.* into the Kings Bench, and returned to stand committed *per mandatum Dom. Regis*, were so farre from being to be remanded by the Law, that in all these foure cases, they were first taken from their severall prisons wherein they had beene detained by such a generall command, which could not have beene, if they had not beene adjudged in every of the Cases to have beene bayleable by the Court, and that this Commitment of them to the Marshall of the Kings Bench was the first step towards the bayling of them, as in all other cases; but that it appears not, that either they ever demanded to be bayled, or that they were able to finde sufficient Bayle. And if they did not the one, or could not doe the other, it may follow indeed that they were not bayled; but the commitment to the Kings Bench being the first step to bayling, and by constant course it is, shewed most plainly, that they were bayleable by the Law, which is the onely thing in question: so that although the foure Presidents were ranked among them that may seeme to make against the resolution of the House of Commons, which was done, both because they have this small colour in them for the other side, to any man that is not acquainted with the nature and reasons of the Entries and courses of the Court of Kings Bench, and also because all or some of them had beene used in the late great case in the Kings Bench, as Presidents that made against this liberty claimed by the Subject, yet in truth all foure of them doe fully prove their resolution, that is, they plainly shew that the Court of Kings Bench in every of them resolved, that the prisoners so committed were bayleable, other wise they had beene remanded, and not committed to the Marshall of the Kings Bench. And this was the answer to the objection made by M. Attorney upon these foure Presidents, being all of them in the time of H. 7.

To the fifth of these being *Ed Pages Case* in 7. H. 8. Rot. 23. 7. H. 8. Pages
 M. Attorney objected thus, he said, that *Edward Page* was com- *case cite devant.*
 mitted fo. 43. & 63.

mitted to the Marshallsea of the Household *per mandatum Dom. Regis ibid. salvo custodiend. &c. Qui committitur Marr. Hospitii Dom. Regis, &c.* by which it appears as he said, that the Court remanded him to the prison of the Marshallsea of the household, and hee said, whereas it had beene objected at the first conference, that here was some mistaking in the Entry, he said he conceived indeed there was a mistaking, but the mistaking was, that the Clerk had entred *committitur* for *remittitur*, and that it should have beene *Qui remittitur Hospitii Dom. Regis*, for when ever they remand a prisoner *remittitur* and not *committitur* should be entred, and that mistaking being so rectified and understood, he conceived it was a direct President against the resolution of the House of Commons.

R^{is} al ditob-
jection.

To this it was answered by the Gent. of the House of Commons, that there was no doubt indeed but that a mistaking was by the entry of the Clerk, but that the mistaking was quite of another nature. The addition of these words *Hospitii Dom. Regis* was the mistaking, and the entry should have bin *qui committitur Marr. &c.* onely, that is, that he is committed to the Marshall of the Kings Bench, and so indeed the force of the President should be just the same with the first foure, but the ignorance of the Clerk that entred it, knowing not how to distinguish betweene the Marshall of the Household, and the Marshall of the Kings Bench, was the cause of the Addition of these words, and to confirme fully this kinde of interpretation of that President, and of the mistaking in it, 'twas observed by the Gent. of the House of Commons, that there is in the Margine of the Roll an infallible Character that justifies so much, for by the course of that Court whensoever a prisoner is committed to the Marshall of the Kings Bench, and not remanded, the word *Marr. &c.* is written in the Margin short, by *Marr. &c.* turned up, and that is never written, but when the meaning and sence of the Entry is, that the prisoner is committed to the prison of the same Court, now in this Case in the Margin *Marr.* is likewise written, which most plainly shewes the truth of the Case was, that this Page was committed to the Marshall of the Kings Bench, and not remanded, which if hee had beene, neither could the Entry have beene *committitur*, nor should

should the Margine of the Rolles have had *Marr* written in it. And thus they answered Master Attorneys Objection touching this President, and concluded that now besides the first foure of the eight, they had another, and so five, more to prove that a prisoner committed *per mandatum Dom. Regis* generally was bayled by the Judgement of the Court. However it appeares not in these particulars that they were bayled, which perhaps they were not, either because they prayed it not, or because they could not find sufficient Bayle.

To the sixth of these eight Presidents, being the Case of *Tho. 8. Jac. Casars*
Casar in 8. Jac. Rot. 99. Master Attorney objected it thus, That *case cite devant*
Casar being committed *per mandatum Dom. Regis* to the Mar- *fo. 46. & 64.*
 shallica of the Household was returned upon *Habeas Corpus* to *Objections hors*
 be so committed, and therefore deteyned in Prison, and that *de ceo.*
 the entrie is *qui remittitur prisona pred.* by which it appeares cleerely, that he was remanded to the same prison from whence he came.

To which the Gentlemen of the house of Commons gave this answer, they said that the usuall entrie of a *remittitur*, when it is to shew that the Court by way of Judgement or award upon a resolution or debate remand the prisoner, is *quonsq. secundum legem deliberatus fuerit*, but when they advise, or give day to the Keeper of the prison to amend his returne, or the like, then the entrie is only *remittitur* generally, or *remittitur prisona pred.* But it was indeed affirmed by Master Keeling, a Clerke of experience in that Court, that the entrie of *Remittitur* generally, or *Remittitur prisona pred.* was indifferently used for the same that *Remittitur quonsq. &c.* yet it was expressly shewed by the Gent. of the house of Commons that there was sometimes a difference, and that so it might, well be in this case, for in the last of these eight presidents, which is *Saltonstals* Case, they observed that *Remittitur prisona pred.* is often used, only for a remanding during the time that the Court gave leave for the Warden of the Fleet to amend the returne, which shewes plainly, though sometimes *Remittitur* generally, and *Remittitur quonsq.* may meane but the same, yet sometimes also it doth not meane the same. And that in this Case of *Casar* it meant only but so much as it doth

*Rûs al dits
 objections.*

twice in that of *Saltonstalls Case*, which was proved also by a rule of the Court, which was cited out of the Rule Booke of the Court of Kings Bench, by which rule the Court expressly ordered, that unlesse the Steward and Marshall of the household did sufficiently return the Writ of *Habeas Corpus* for *Casars*, that he should be discharged, the words of the Rule are *Nisi preda. Seneschall' & Marr' Hospitii Dom. Regis sufficienter returnabis bre. de Habeas Corpus Thoma Casar die Mercur. prox' post festum Sancti. Martin. defendens exonerabitur.* And this was the opinion of the Court, which shewes that the Court was so farre from remaunding him upon the returne, that they resolved, that unlesse some better returne was made, the prisoner should be discharged of his first imprisonment, though it appeare to them out of the body of the returne upon which they are to judge, that he was committed *per mandatum Dom. Regis* only. And the Rule not only shewes the opinion of the Court then to be agreable with the resolution of the house of Commons, but also proves that *Remittitur* generally, and *Remittitur prisona predict.* doth not alwayes imple a remaunding upon Judgment or debate. And this answer was given to this of *Casars Case*, and that is the sixth of this number.

The seventh, is the Case of *James Demestrius*, it was 12. *Jac. Rot.* 153. Master Attorney objected, that this *Demestrius* and divers others being Brewers, were committed *per Consilium Dom. Regis* to the Marshalsea of the household, and that upon the commitment being so generally returned they were remanded, and that the entrie was *immediate remittitur prelat. Marr' hospitii prad.* where observes that *immediate* shewes that the Judges of that time were so resolved of this question, that they remaunded them presently, as men that well knew what the Law was herein.

Hereunto the Gent. of the House of Commons gave this answer; First, that the *remittitur* in this Case is but as the other in *Casars*, and so proves nothing against them. Secondly, that *immediate* being added to it shewes plainly, that it was done without debate, or any Argument or consideration had of it, which makes the Authoritie of the President to be of no force

in

12. *Jac. Demestrius* and others case cite devant, fo. 46. & 64. Objections hors de ceo.

Ris al dit objections.

in point of Law. For Judgements and awards given upon deliberation and debate only are proofes and Arguments of weight, and not any sudden act of the Court without debate or deliberation. And the entrie of *immediate* being proposed to Master Keeling, it was confirmed by him, that by the Entrie it appeared by their course, that the remaunding of him was the selfe-same day he was brought, which as it was said by the Gent. of the house of Commons might be upon the rising of the Court, or upon advisement, or the like; and this answer was given to this President of the Brewers.

To the last of these eight which Master Attorney objected *12. Jac. Saltonstalls Case* *12. Jac.* he was committed *per mandatum à* *stalls case cite devant, fo. 49. & 65* *Dom. de privato Consilio*, and being returned by the Warden of the Fleet to be so, *Remittitur prisona pred.* and in *13. Jac.* in the same Case there is *remittitur* generally in the Roll, and these *Objections hors de ceu.* two make but one Case, and are one President.

To this the Gent. of the house of Commons answered, that *Rñs al dits objections.* it is true the Rolles have such entries of *remittitur* in them generally. But that proves nothing upon the reason before used by them in *Casars Case*. But also *Saltonstall* was committed for another cause, besides *per mandatum Dom. Regis*, for a contempt against an Order in the Chancery, and that was in the returne also. And besides the Court, as it appeares in the Record, gave severall dayes to the Warden of the Fleet to amend his returne, which they would not have done, if they had conceived it sufficient, for that which is sufficient needs not amendment.

To this Master Attorney replied, that they gave him day to amend his returne, in respect of that part of it which concerns the Order in Chancery, and not in respect of that which was *per mandatum Dom. Regis*. But the Gent. of the House of Commons answered, that that appeared not any where, nor indeed is it likely at all, nor can be reasonably so understood, because if the other returne *per mandatum Dom. Regis* had bene sufficient by it selfe, then doubtlesse they would have remanded him upon that alone, for then they needed not at all to have stood upon the other part of the returne in this Case. So that out of the Record it selfe it appears fully, that the Court conceived

conceived the returne to be insufficient. So the Gent. of the house of Commons concluded, that they had a great number of Presidents, besides divers Acts of Parliament, and reasons of Common law, agreeable to their resolution, and that there was not one President at all that made against them, but indeed, that almost all that were brought as well against them as for them, if rightly understood, made fully for the maintenance of their conclusion, and that there was not one Example or President of a *Remittitur* in any kind upon the point before that of *Casars Case*, which is before cleared with the rest, and is but of late time, and of no moment against the resolution of the House of Commons.

And thus, for so much as concerned the presidents of Record, the first day of the Conference desired by the Lords ended.

The next day they desired another Conference with the House of Commons, at which it pleased the Committee of both Houses to heare Master Attorney againe make what Objections he could against other parts of the Argument formerly delivered from the House of Commons, he objected against the Acts of Parliament, and against the reasons of the Law, and his objections to those parts were answered, as it appears by the Answers by order given into the House of Commons by the Gent. that made them. He objected also upon the second day against the second kind of Presidents, which are resolutions of Judges in former times, and not of Record, and brought also some other testimonies of the opinions of Judges in former times touching this point.

First, for that Resolution of all the Judges of *England* in 34. *El.* mentioned and read in the Arguments read at the first Conference, he said, That it was directly against the resolution of the House of Commons, and observed the words of it in one place to be, that persons so committed by the King, or by the Counsell, may not be delivered by any of the Courts &c. And in another, that if the cause were expressed, either in general or in specialtie, it was sufficient, and he said that the expressing of a Cause in generaltie, was to shew the King and the Counsels command, and to this purpose he read the whole words

of

*Resolution de
tous les Judges,
34. El.
Objections hors
de ceo per l'At-
torney.*

of that resolution of the Judges. Then he objected also, that in a report of one *Respublica* Case in the Kings Bench in 13 *fac.* he found that the opinion of the Judges of that Court (Sir *Edward Cooke* being then chiefe Justice and one of them) was that a prisoner being committed *per mandatum Dom. Regis*, or *privati Consilii*, without cause shewed, and so returned, could not be bayled, because it might be matter of State, or *Arcanum imperii*, for which he stood committed. And this also he added, an opinion he found in a Journall in the House of Commons of 18. *fac.* wherein Sir *Edward Cooke* speaking to a bill preferred for the explanation of *Magna Charta* touching imprisonment, said in the same House, that one so committed could not be enlarged by the Law, because it might be matter of State for which he was committed, and amongst these objections, as his objections of the other nature, also he spake of the confidence that was shewed in the behalfe of the House of Commons: and he said, it was not confidence on either part could adde any thing to the determination of the question; but if he would, that he had as much reason of Confidence for the other side against the resolution of the House of Commons, grounding himselfe upon the force of his objections. which as he conceived had so weakned the Arguments of the House of Commons.

To this a reply was made, and first it was said to the Lords ^{Risall dits ob-} on the behalfe of the House of Commons, that notwithstanding ^{jections.} any thing yet objected, they were upon cleare reason still confident of the truth of their first resolution, grounded upon so just examination, and deliberation taken by them. And it was observed to the Lords also, that their confidence herein was of another nature, and of greater waight, then any confidence that could be expressed by M. Attorney, or whomsoever else being of his Majesties Counsell learned.

To which purpose the Lords were desired to take into their present memories the difference between the present qualities of the Gent. that spake in the behalfe of the House of Commons, & of the Kings learned Counsell in their speaking there. howsoever accidently they were both men of the same profession: For the Kings Counsell spake as Counsell perpetually retained

by Fee, and if they made glosses or advantagious interpretations whatsoever for their own part, they did but what belonged unto them; but the Gent. that spake in behalfe of the House of Commons, came there, bound on the one side by the trust reposed in them, by their Country that sent them, and on the other side by an oath taken by every of them before hee sit in the House, to maintaine and defend the rights and prerogatives of the Crown, for even in the point of Confidence alone those of them that speake as retained Counsell by perpetuall Fee, and those that by their place being admitted to speake, are bound to utter nothing but truth, both by such a trust and such an oath, were no way to be so compared or counterpoised, as if the one were of no more waight then the other.

Resolution de 34.
El. explaine &
expound.

For that of the resolution of all the Judges in England in 34. El. It was shewed that plainly it agreed with the resolution of the House of Commons, for although indeed it might have beene expressed with more perspicuity, yet the words of it as they are, sufficiently shew that to them. To that purpose, besides the words of the whole frame of this resolution of the Judges, as it is in the Copie transcribed out of the Lord chiefe Justice *Andersons* Book, written with his owne hand, which book was here offered to be shewed in the behalfe of the House of Commons, it was observed, that the words of the first part of it shew plainly, that all the Judges of England then resolved, that the prisoners spoken of in that first part of their resolution, were onely prisoners committed with cause shewed; for they onely say they might not be delivered by any of the Courts without due triall, by law and judgement of the acquittall they must be delivered; but it is cleare that no triall or acquittall can be had, where there is not some cause laid to their charge, for which they ought to stand committed. Therefore in that part of the resolution such prisoners are onely meant as are committed with cause shewed, as which also the Judges expressly in that resolution expressly thought necessary, as appears in the second part of their resolution, wherein they have these words, If upon the returne of their *Habeas Corpus*, the cause of their commitment be certified to the Judges, as it ought to be, &c. By which words they shew

shew plainly, that every returne of a commitment is insufficient, that hath not a cause shewed of it. And to that which M. Attorney said, as if the Cause were sufficiently expressed in generality, if the Kings command or the Counsels were expressed in it, as if that were meant in the resolution for a sufficient generall cause, It was answered, that it was never heard of in Law, that the power or person that committed the prisoner was understood, for the *causa captionis* or *causa detentionis*, but onely the reason why that power or person committed the prisoner, as also in common speech if any man aske why or for what cause a man stands committed, the answer is not, that such a one committed him, but his offence or some other cause is understood in the question, and is to be shewed in the Answer, but to say that such a one committed the prisoner, is an answer onely to the question, who committed him? and not why or for what cause hee stands so committed.

That for that of the Copie of the report in 13 *Jac.* shewed forth by M. Attorney, it was answered by the Gent. of the House of Commons, that the report it selfe which had beene before seene, and perused among many other things at a Committee made by the House, was of sleight or no authority, for that it was taken by one who was at that time a young Student, and as a reporter in the Kings Bench, and there was not any other report to be found to agree with it. Secondly, although the reports of young Students, when they take the words of Judges as they fall from their mouthes at the Bench, and in the same person and forme as they have spoken, may be of good credit, yet in this Case there was not one word so reported, but in truth there being three cases of a time in the Kings Bench, one *Rosewells Case*, *Allens*, and one *Saltonstalls* case, every of which had something of like nature in it, the Student having beene present in the Court, made up the frame of one report or case out of all three in his owne words, and so put it into his Book: so that there is not a word in the report, but it is framed according to the Students fancie, as it is written, and nothing is expressed in it, as it came from the mouth of the Judges, other wise then as his fancy directed him.

Thirdly, there are in the report plaine falshoods of matter of fact, which are to be attributed either to the Judges, or to the reporter. It is most likely by all reason that they proceeded from the reporters faults, and howsoever, these matters of falshood shew sufficiently that the credit of the rest is of light value. It is said in the report that *Harcourt* being committed by the Counsell, was bayled in 40. *El.* upon a Privie Seale or a Letter, whereas in truth there is no such thing. And it is said here, that kind of Letters are filed in the Crowne Office, whereas in truth there was any such kind of Letters filed there in any case whatsoever, that resolution of the Judges in 34. *El.* is mis-cited there, and made in 36. *El.* And it is said there, that by that resolution a Prisoner returned to be committed by the Command of the King might not at all be delivered by the Court, whereas no such thing is comprehended in that resolution.

But that which is of most moment is, that howsoever the truth of the report were, yet the opinion of the Judges being sudden, and without any debate had of the Case, is of light moment, for in difficult points especially the most grave and learned men living may on the sudden let fall (and that without any disparagement to them) such opinions as they may will, and ought to change upon further inquirie, examination, and full debate had before them, and mature deliberation taken by them. Now plainly in that of 13. *Jac.* there is not so much as a pretence of any debate at the Barre or Bench. All that is reported to have beene, is reported as spoken of the sudden. And can any man take such a sudden opinion to be of value against such debates and mature deliberations since had of the point? And indeed this great point, and all circumstances belonging to it, hath within this halfe ycare beene so fully examined and searched into, that it may well be affirmed, that the most learned man whosoever that hath now considered of it, hath within that time, or might have learned more reason of satisfaction in it then ever before he met with. Therefore the sudden opinion of the Judges to the contrary is of no value here, which also is to be said by that opinion obliviously delivered in the Commons house in 18. *Jac.* as Master Attorney,

ney objected out of the Journall of the House. But besides, neither was the truth of that report of that opinion of the Journall any way acknowledged, for it was said on the behalfe of the house of Commons, that their Journals were for matters of Orders and resolutions of the House of such Authority, as that they were as their Records. But for any particular mans opinion noted in any of them, it was so farre from being of any authority there with them, that in truth no particular opinion is at all to be entred in them, and that their Clerke offends whenever hee doth to the contrary. And to conclude no such opinion whatsoever can be sufficient to weaken the cleare Law comprehended in these resolutions of the House of Commons grounded upon so many Acts of Parliament, so much reason of the Common law, and so many Presidents of Record, and the resolution of all the Judges of *England*, and against which not one Law written or unwritten, not one President, not one reason hath beene brought that make any thing to the contrary.

And thus to this purpose ended the next day of the Conference desired by the Lords, and had by a Committee of both Houses.

FINIS.
